TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~282~~. 86

THE STEAMBOAT "TELEGRAPH," HER TACKLE, ETC., FREDERICK A. POTTS, CLAIMANT, APPELLANT,

vs.

JOHN GORDON, JAS. BRUCE, AND MICHAEL J. McAULIFFE.

No. ~~283~~. 87

THE PROPELLER "MARY J. VAUGHAN," HER TACKLE, ETC., THOMAS J. VAUGHAN, CLAIMANT, APPELLANT,

vs.

JOHN GORDON, JAS. BRUCE, AND MICHAEL J. McAULIFFE.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED NOVEMBER 7, 1870.

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JOHN GORDON, JAS. BRUCE, AND MICHAEL J. McAULIFFE.

No. 283.

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vs.

JOHN GORDON, JAS. BRUCE, AND MICHAEL J. McAULIFFE.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 412, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of John Gordon & al. against The Propeller Mary J. Vaughan, her cargo, tackle, &c., & The St'boat Telegraph, her tackle, &c., as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 4th day of Nov'r, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the said United States the ninety-fifth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

[5-cent int. rev. stamp, canceled.]

2 To the Honorable Samuel R. Betts, judge of the district court of the United States for the southern dist. of New York:

The libel of John Gordon, James Bruce, and Michael J. McAuliffe, composing the firm of Gordon, Bruce & McAuliff, merchants, of the city of New York, ag'st The Propeller "Mary J. Vaughan," her tackle, apparel, and other furniture, and The Steamboat Telegraph, her tackle, apparel, and other furniture, and all persons lawfully intervening for their interests in the said propeller or said steamboat, in a cause of collision, civil and maritime, alleges as follows:

First. That your libellant before and at the time of the collision, hereinafter in the third article mentioned, were the consignees of three thousand six hundred and eighty-four bushels of barley or thereabouts, of great value, viz, of the value of ten thousand dollars, or thereabouts, laden on board the canal-boat "Sherman Lewis," and in
3 course of transportation from Canada to the city of New York, the said canal-boat Sherman Lewis being tight, staunch, strong, and sufficiently manned and equipped for the voyage on which she was engaged.

Second. That said canal-boat "Sherman Lewis," with said barley on board, was taken in tow by said screw-propeller "Mary J. Vaughan," at Troy, to be towed to the city of New York, and that said propeller, with said canal-boat "Sherman Lewis" lashed alongside, on the port or left-hand side of said propeller, left Troy on the morning of Tuesday, Oct. 25th, 1864, bound to the city of New York; that said canal-boat was securely fastened to the port side of said propeller by fastenings at the bow and stern, and was propelled, governed and controlled in all respects in her course and movements by said propeller, her master and crew—the said propeller having only another canal-boat in tow,
4 lashed on her starboard side.

Third. That said propeller, with said canal-boat, laden with said barley, in tow, as aforesaid, proceeded on her voyage down the Hudson River towards New York, and on the morning of Wednesday, the 26th of October, 1864, between 3 & 4 o'clock, the said propeller being then between Newburgh and Cold Springs, in the Highlands, encountered the said steamboat "Telegraph," having barge in tow lashed alongside said steamboat, on her port or larboard side, the said "Telegraph," having another barge on her starboard side, with a third

barge astern of the second—the said steamboat Telegraph being bound or moving up the river at the time; that the barge so lashed alongside and in tow of the Telegraph, on her port side of said steamboat, and being wholly propelled, governed, and controlled in all respects by the said steamboat "Telegraph," her master and crew, came in collision with and struck the said canal-boat "Sherman
5 Lewis" near her bow with great force and violence, parting the fasts that held said canal-boat to said propeller "Vaughan," staving in her bow and causing so much damage and injury to said canal-boat that in about fifteen minutes she went down, with said barley on board, in water from 100 to 200 feet deep, as your libellants are informed & believe. That the sinking of said canal-boat followed so rapidly after the collision, that the master & part of the crew had barely time to save their lives by jumping on to the barges, two others saving themselves on a deck load of hoops that floated after the sinking of the canal-boat; that at the place where the collision occurred, the Hudson River is nearly one mile wide, and the channel or course straight for several miles, sufficiently wide and deep for the said propeller and steamboat with their several tows to pass each other without collision or dam-
6 age. That although the collision occurred before daylight, the night was a clear starlight night and nearly calm, there being only a very light breeze, with the moon on her last quarter, an hour or so before setting.

Fourth. That said barley was totally lost by the sinking of the canal-boat in such deep water, near the middle of the river, and that the collision and consequent damage and loss to these libellants of about ten thousand dollars, was caused by the negligence, want of skill, and improper conduct of the persons navigating the said propeller "Mary J. Vaughan," or by the negligence, want of skill, and improper conduct of the persons navigating the said steamboat "Telegraph," or by their joint negligence, fault, and improper conduct, and not by or through any fault, negligence, or improper conduct of the persons on board the canal-boat Sherman Lewis, her master and crew, or of these libellants.

7 Fifth. That the said propeller "Mary J. Vaughan," and the said steamboat "Telegraph," are now lying within the port of New York, and within the jurisdiction of this court.

Sixth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said propeller "Mary J. Vaughan," her tackle, apparel, and other furniture, and against the said steamboat "Telegraph," her tackle, apparel, & other furniture, and that all persons having any interest in said propeller "Mary J. Vaughan," or in the said steamboat "Telegraph," may be cited to appear and answer all and singular the matters aforesaid, and
8 that this honorable court would be pleased to decree the payment of the damages as aforesaid, and that the said vessels may be condemned and sold to pay the same, and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

SAMUEL E. LYON,
Proctor for Lib'lnts.
ALEX. HAMILTON, JR.,
Advocate.

CITY & COUNTY OF NEW YORK, *ss:*

James Bruce, of the city of Brooklyn, county of Kings, one of the libellants above named, being duly sworn, says that he has read the foregoing libel, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to these matters he believes it to be true.

JAMES BRUCE.

Sworn & subscribed before me the 12th day of Nov'r, 1864. In testimony whereof witness my hand & seal of office.

9 [NOTARY SEAL.] JOHN F. DOYLE,
Notary Public, State of New York, N. Y. County.

[Int. rev. 5-cts stamp cancelled.]

10 *Stipulation for libellants' costs, entered into pursuant to the rules and practice of this court.—Filed the 14th day of Nov'r,* 1867.

District court of the United States for the southern district of New York.

Whereas a libel was filed in this court on the fourteenth day of Nov'r, in the year of our Lord one thousand eight hundred and sixty-four, by John Gordon, James Bruce, and Michael J. McAuliffe, against The Propeller Mary J. Vaughan, her tackle, &c., and The St'boat Telegraph, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said vessels may be condemned and sold to pay the demands of libellants, and the said libellants and Alex. Hamilton, jr., surety of parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the libellants or their surety, execution may issue against their goods, chattels, and lands, for the sum of two hundred & fifty dollars:

Now therefore, it is stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred & fifty dollars, conditioned that the libellants above-named shall appear and answer to the cause and to interrogatories, and shall pay all such costs as shall be awarded against them by this court, or, in case of appeal, by the appellate court.

JAMES RRUCE & O'RS,
By ALEX. HAMILTON, JR., *Att'y.*
ALEX. HAMILTON, JR.

Taken and acknowledged this 14th day of Nov'r, 1864, before me.

JOHN A. OSBORN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Alexander Hamilton, jr., party to the above stipulation, being duly sworn, doth depose and say that he resides in the city of New York, and that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

ALEX. HAMILTON, JR.

Sworn to this 14th day of Nov'r, 186 , before me.

JOHN A. OSBORN.
U. S. Commissioner.

Recorded the 14th day of Nov'r, 186 .

G. F. BETTS, *Clerk.*

11 SOUTHERN DISTRICT OF NEW YORK, *ss:*

[SEAL.] The President of the United States of America, to the marshal of the southern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of New York, on the 14th day of Nov'r, in the year of our Lord one thousand eight hundred and sixty-four, by John Gordon, James Bruce, & Michael J. McAuliffe ag'st The Propeller Mary J. Vaughan, her tackle, &c., & The St'boat Telegraph, her tackle, &c.; collision; $10,000; for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said propeller & st'boat or vessels, their tackle, &c., may be cited in general and special, to answer the premises, and, all proceedings being had, that the said propeller & st'boat or vessels, their tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellants.

You are therefore hereby commanded to attach the said propeller & st'boat or vessels, their tackle, &c., and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing, or having any thing to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court to be held in and for the southern district of New York, on the 6th day of Dec'r, 1864, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the Honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this 14th day of Nov'r, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-ninth.

GEO. F. BETTS, *Clerk.*

SAM'L E. LYON,
Proctor for Libellant.

[U. S. 50-ct. int. rev. stamp, cancelled.]

12 In obedience to the within monition, I attached the propeller Mary J. Vaughan, her tackle, &c., & the st'boat Telegraph, her tackle, &c., therein described on the 14th day of Nov'r, and have *not* given due notice to all persons claiming the same, that this court will on the 6th day of Dec'r, inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

R. MURRAY,
U. S. Marshal.

Dated Dec. 6th, 1864.

(Indorsed:) Vol. 18, page 483. Southern district of New York, United States district court. John Gordon, James Bruce, & Michael J. McAuliffe vs. The Propeller Mary J. Vaughan, her tackle, &c., & The St'boat Telegraph, her tackle, &c. Monition ret'ble Dec. 6th, 1864. Samuel E. Lyon, proctor for libellant. Filed Dec. 6th, 1864.

I hereby depute P. Miller to execute the within process.
Dated Nov. 14, 1864.

R. MURRAY,
U. S. Marshal.

13 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on , the 18th day of Nov'r, in the year of our Lord one thousand eight hundred and sixty-four:

Present, the Honorable Samuel R. Betts, district judge.

THE PROPELLER MARY J. VAUGHAN, impleaded, &c.,
asm.
JOHN GORDON & AL.

And now, Rufus Brayton, intervening as agent for the interest of Thomas T. Vaughan in the said propeller, appears before the honorable court and makes claim to the said propeller, &c., as the same are attached by the marshal, under process of this court, at the instance of John Gordon & al., and the said Rufus Brayton aver that said Vaughan was in possession of the said propeller at the time of the attachment thereof, and that the person above named is the true and bona-fide owner of the said propeller, and that no other person is the owner thereof; and the said Rufus Brayton the true and lawful bailee thereof as agent; wherefore he prays to defend accordingly.

R. BRAYTON.

C. VAN SANTVOORD,
Proctor for Claimant.

14 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Rufus Brayton, being duly sworn, deposes and says that he resides ; that he is agent of Th's T. Vaughan, owner of the propeller above named; that the owners of said propeller resides in Whitehall, Washington Co., N. Y. State, and that this deponent is duly authorized to put in this claim in behalf of the owner of the said propeller, and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

R. BRAYTON.

Sworn to and subscribed this 18th day of Nov'r, A. D. 1864, before me.

GEO. F. BETTS,
U. S. Commissioner.

(Indorsed:) Vol. ——, No. ——. United States district court for the southern district of New York. asm. . ——— ———, proctor for claimant. Claim of . Filed the 18th day of Nov'r, 1864.

15 Respondent's costs.]

Stipulation entered into pursuant to the rules and practice of this court.—Filed the 18th day of Nov'r, 1864.

District court of the United States for the southern district of New York.

Whereas a libel was filed in this court on the 14th day of Nov'r, in the

year of our Lord one thousand eight hundred and sixty-four, by John Gordon & others against The Propeller Mary J. Vaughan, her tackle, &c., & The Steamboat Telegraph, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said propeller, &c., be condemned & sold to pay the demands of libellants, and the parties hereto hereby consenting that in case of default or contumacy on the part of the claimants or his sureties, execution for the sum of two hundred & fifty dollars may issue against their goods, chattels, and lands:

And whereas, also, a claim has been filed in said cause by Thomas T. Vaughan, as owner of the propeller "Mary J. Vaughan:"

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred & fifty dollars, conditioned that the cl'm't above-named, shall pay all costs and expenses which shall be awarded against him by the final decree of this court, or upon an appeal by the appellate court.

R. BRAYTON,
Ag't for Owner.
JNO. J. VAN NOSTRAN.
A. D. LADD.

Taken and acknowledged this 18th day of Nov'r, 1864, before me.
GEO. F. BETTS,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John J. Van Nostran & Amasa D. Ladd, parties to the above stipulation, being duly sworn doth depose, and say that he resides in the southern dist. of New York, & that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

JA'S J. VAN NOSTRAN.
A. D. LADD.

Sworn to this 18th day of Nov'r, 1864, before me.
GEO. F. BETTS,
U. S. Commissioner.

Recorded the 18th day of Nov'r, 1864.
GEO. F. BETTS, *Clerk.*

16 *Stipulation entered into pursuant to the rules and practice of this court.—Filed the 18th day of Nov'r,* 1864.

District court of the United States for the southern district of New York.—In admiralty.

Whereas a libel was filed on the 14th day of Nov'r, in the year of our Lord one thousand eight hundred and sixty-four, by John Gordon, James Bruce, & Michael J. McAuliffe, composing the firm of Gordon, Bruce & McAuliffe, against The Propeller Mary J. Vaughan, and The St'boat Telegraph, their tackle, &c., for the reasons and causes in the said libel mentioned; and whereas the said propeller Mary J. Vaughan, her tackle, &c., is now in the custody of the marshal, under the process issued in pursuance of the prayer of said libel; and whereas the proctor for libellants has consented that said propeller Mary J. Vaughan, &c., be discharged from custody on the claimants thereof executing stipulations for costs and

value, the latter in the sum of eight thousand dollars, as appears from said consent now on file in said court; and the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the cl'm't of said propeller or his sureties, execution for the above amount may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulators undersigned, shall at any time, upon the interlocutory or final order or decree of the said district court, or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree, to Cornelius Van Santvoord, esquire, proctor for the claimant of said propeller Mary J. Vaughan, abide by and pay the money awarded by the final decree rendered by the court, or the appellate court if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

R. BRAYTON,
Ag't f'r Owner.
JNO. J. VAN NOSTRAN.
A. D. LADD.

Taken and acknowledged this 18th day of Nov'r, 1864, before me.
GEO. F. BETTS,
U. S. Commissioner.

17 SOUTHERN DISTRICT OF NEW YORK, *ss:*

John J. Van Nostran & Amasa D. Ladd, part to the above stipulation, being duly sworn, each deposes and says, that he resides in the city of Brooklyn, & that he is worth the sum of sixteen thousand dollars, over and above all his just debts and liabilities.

JNO. J. VAN NOSTRAN.
A. D. LADD.

Sworn to this 18th day of Nov'r, 1864, before me.
GEO. F. BETTS,
U. S. Commissioner.

Recorded this 18 day of Nov., 1864.

18 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Friday, the 18th day of Nov'r, in the year of our Lord one thousand eight hundred and sixty-four:

Present, the Honorable Samuel R. Betts, district judge.

THE PROPELLER MARY J. VAUGHAN, HER tackle, &c., impleaded with Steamboat Telegraph,
ad.
JOHN GORDON & OTHERS.

On reading & filing consent to stipulate signed by David Lyon, proctor for libellants, and the terms being complied with, on motion of Mr. Van Santvoord, proctor for the claimant of the propeller, it is ordered that said propeller "Mary J. Vaughan," her tackle, &c., be discharged from custody, the stipulation for value executed by the claimant thereof to represent the said propeller in the above-entitled action.

And it is further ordered that the appearance of the claimant of said propeller be, & the same is hereby, entered.

19 (Indorsed:) Vol. —, No. —. United States district court for the southern district of New York. Order. ——— ———, proctor for ———. Filed the 18th day of Nov'r, 1864.

20 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Monday, the 21 day of Nov'r, in the year of our Lord one thousand eight hundred and sixty-four:

Present, the Honorable Sam'l R. Betts, district judge.

THE PROPELLER MARY J. VAUGHAN, HER tackle, &c., and The Steamboat Telegraph, her tackle, &c.,
asm.
JOHN GORDON & AL.

And now Frederic A. Potts, owner of the steamboat Telegraph, intervening for the interest of himself in the said steamboat, appears before the honorable court and makes claim to the said steamboat, &c., as the same are attached by the marshal, under process of this court, at the instance of John Gordon & others, and the said Frederic A. Potts avers that he was in possession of the said steamboat at the time of the attachment thereof, and that the person above named is true and bona-fide owner of the said steamboat, and that no other person is the owner thereof; wherefore he prays to defend accordingly.

F. A. POTTS.

Sworn to and subscribed this 21st day of Nov'r, A. D. 1864, before me.
GEO. F. BETTS,
U. S. Commissioner.

FITHIAN & SMITH,
Proctors for Claimant.

21 (Indorsed:) Vol. —, No. —. United States district court for the southern district of New York. The St'boat Telegraph, &c., asm. John Gordon & al. ——— ———, proctor for claimant. Claim of owner. Filed the 21st day of Nov., 1864.

22 Respondent's costs.]

Stipulation entered into pursuant to the rules and practice of this court.—Filed the 21st day of Nov., 1864.

District court of the United States for the southern district of New York.

Whereas a libel was filed in this court, on the 14th day of Nov'r, in the year of our Lord one thousand eight hundred and sixty-four, by John Gordon & others against The Propeller Mary J. Vaughan & The St'boat Telegraph, their engines, tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said steamboat, &c., may be condemned & sold to pay the demands of libellants, and the parties

hereto hereby consenting that in case of default or contumacy on the part of the claimant or his sureties, execution for the sum of two hundred & fifty dollars may be issued against their goods, chattels, and lands;

And whereas, also, a claim has been filed in said cause by Frederic A. Potts, as owner of the said st'boat Telegraph:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred & fifty dollars, conditioned that the cl'm't above named, shall pay all costs and expenses which shall be awarded against him by the final decree of this court, or, upon an appeal, by the appellate court.

F. A. POTTS.
JOS. T. MOORE.

Taken and acknowledged this 21st day of Nov'r, 1864, before me.
GEO. F. BETTS,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Joseph T. Moore, party to the above stipulation, being duly sworn, doth depose and say that he resides in Flushing, L. I., State of N. Y.; that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

JOS. T. MOORE.

Sworn to this 21st day of Nov'r, 1864, before me,
GEO. F. BETTS,
U. S. Commissioner.

Recorded the 21st day of Nov'r, 1864.
GEO. F. BETTS, *Clerk.*

23 *Stipulation entered into pursuant to the rules and practice of this court.—Filed the 21st day of Nov'r, 1864.*

District court of the United States for the southern district of New York.—In admiralty.

Whereas a libel was filed on the 14th day of November, in the year of our Lord one thousand eight hundred and sixty-four, by John Gordon & others, against The Propeller Mary J. Vaughan, her tackle, &c., & The Steamboat Telegraph, her tackle, &c., for the reasons and causes in the said libel mentioned; and whereas the said steamboat Telegraph, her tackle, &c., is in the custody of the marshal, under the process issued in pursuance of the prayer of said libel, and by a consent, signed by the proctor for the libellants, it has been agreed that the said steamboat Telegraph be discharged from custody on the claimant executing stipulations for costs and value, the latter in the sum of eight thousand dollars, as appears from said consent now on file in said court; and the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the claimant or his sureties, execution for the above amount may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulators undersigned, shall at any time upon the interlocutory or final order or decree of the said district court, or of any appellate court

to which the above-named suit may proceed, and upon notice of such order or decree to Fithian & Smith, esquires, proctors for the claimant of said steamboat Telegraph, abide by and pay the money awarded by the final decree rendered by the court, or the appellate court, if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

F. A. POTTS.
JOS. T. MOORE.

Taken and acknowledged this 21st day of Nov'r, 1864, before me.
GEO. F. BETTS,
U. S. Commissioner.

24 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Frederic A. Potts & Joseph T. Moore, parties to the above stipulation, being duly sworn, each deposes and says that he resides in the village of Flushing, L. I., State of New York, and that he is worth the sum of sixteen thousand dollars, over and above all his just debts and liabilities.

F. A. POTTS.
JOS. T. MOORE.

Sworn to, this 21st day of Nov'r, 1864, before me.

——— ———,
U. S. Commissioner.

Recorded this 21st day of Nov'r, 1864.

25 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Monday the 21 day of Nov'r, in the year of our Lord one thousand eight hundred and sixty four:

Present, the Honorable Samuel R. Betts, district judge.

THE ST'BOAT TELEGRAPH, &C., IMPLEADED with The Propeller Mary J. Vaughan,
ads.
JOHN GORDON & AL.

On reading and filing consent to stipulate & waive justification of sureties, and the terms being complied with, on motion of Fithian & Smith, proctors for the claimant of steamboat "Telegraph," it is ordered that said steamboat Telegraph, her tackle, &c., be discharged from custody; the stipulation for value to represent the said steamboat in the above-entitled action.

And it is further ordered that the appearance of the claimant be entered herein.

26 (Indorsed:) Vol. —, No. —. United States district court for the southern district of New York. Order. ——— ———, proctor for ———. Filed the 21st day of Nov., 1864.

27 U. S. dist. court.

THE PROPELLER MARY J. VAUGHAN, HER tackle, &c., impleaded with, &c.,
ads.
JOHN GORDON & ALS., LIBELLANTS.

Exceptions of Thomas T. Vaughan, claimant of the propeller Mary J. Vaughan ,to the libel of John Gordon & others, libellants.

First exception. That the statement of facts upon which the libellants rely for relief is not sufficiently full, by reason of the omission of essential particulars, such as the courses of the respective steamers, one to that of the other, and the acts of commission or omission upon which the imputation of fault may be predicated, which are required by the practice in admiralty to be stated in plain allegations to apprize the claimant of the ground of fact upon which relief is sought ag'st the propeller, that he may admit or take issue thereon, or allege
28 matters in avoidance thereof.

Second exception. The statement of facts in said libel is not sufficient to entitle the libellants to any relief against The Propeller Mary J. Vaughan, and if admitted would not afford ground for a decree against her.

Dec. 6, 1864.

C. VAN SANTVOORD,
Proctor for Claimant of the Vaughan.

(Endorsed:) 18—483. U. S. dist. court. The propeller Mary J. Vaughan, her tackle, &c., impleaded, ads. John Gordon & others, libellants. Exceptions to libel. C. Van Santvoord, proctor for cl't of Vaughan. Filed Dec. 6th, 1864.

29 U. S. dist. court, south. dist. of N. Y.

THE STEAMBOAT TELEGRAPH & ANOTHER
ads.
JOHN GORDON, JAMES BRUCE, & ANOTHER.

The claimants of the steamboat Telegraph except to the libel in the above case, on the following grounds:

First. That it does not state what was the direction of the wind, nor the flow of the tide at the time of the collision complained of.

Second. That it does not state what course was pursued by the steamboat "Telegraph" or the propeller "Mary J. Vaughan," nor at what speed the said vessels were going, nor in what course or direction the said vessels were heading at the time of the collision or previous thereto.

Third. That the libellants cannot legally join in the same libel
30 both the said steamboat and said propeller, nor maintain a joint libel ag'st both said vessels.

Fourth. That said libel does not show or state in what respect the said steamboat *boat* Telegraph was in fault, or improperly managed, or conducted, and does not show or state any fault, misconduct, or negligence on the part of said steamboat Telegraph, or any defect in her tackle, apparel, or furniture, or any negligence, fault, or misconduct in those having said steamboat in charge.

to which the above-named suit may proceed, and upon notice of such order or decree to Fithian & Smith, esquires, proctors for the claimant of said steamboat Telegraph, abide by and pay the money awarded by the final decree rendered by the court, or the appellate court, if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

F. A. POTTS.
JOS. T. MOORE.

Taken and acknowledged this 21st day of Nov'r, 1864, before me.
GEO. F. BETTS,
U. S. Commissioner.

24 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Frederic A. Potts & Joseph T. Moore, parties to the above stipulation, being duly sworn, each deposes and says that he resides in the village of Flushing, L. I., State of New York, and that he is worth the sum of sixteen thousand dollars, over and above all his just debts and liabilities.

F. A. POTTS.
JOS. T. MOORE.

Sworn to, this 21st day of Nov'r, 1864, before me.

——— ———,
U. S. Commissioner.

Recorded this 21st day of Nov'r, 1864.

25 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Monday the 21 day of Nov'r, in the year of our Lord one thousand eight hundred and sixty four:

Present, the Honorable Samuel R. Betts, district judge.

THE ST'BOAT TELEGRAPH, &C., IMPLEADED with The Propeller Mary J. Vaughan, *ads.* JOHN GORDON & AL.

On reading and filing consent to stipulate & waive justification of sureties, and the terms being complied with, on motion of Fithian & Smith, proctors for the claimant of steamboat "Telegraph," it is ordered that said steamboat Telegraph, her tackle, &c., be discharged from custody; the stipulation for value to represent the said steamboat in the above-entitled action.

And it is further ordered that the appearance of the claimant be entered herein.

26 (Indorsed:) Vol. —, No. —. United States district court for the southern district of New York. Order. ——— ———, proctor for ———. Filed the 21st day of Nov., 1864.

27 U. S. dist. court.

THE PROPELLER MARY J. VAUGHAN, HER tackle, &c., impleaded with, &c., *ads.* JOHN GORDON & ALS., LIBELLANTS.

Exceptions of Thomas T. Vaughan, claimant of the propeller Mary J. Vaughan ,to the libel of John Gordon & others, libellants.

First exception. That the statement of facts upon which the libellants rely for relief is not sufficiently full, by reason of the omission of essential particulars, such as the courses of the respective steamers, one to that of the other, and the acts of commission or omission upon which the imputation of fault may be predicated, which are required by the practice in admiralty to be stated in plain allegations to apprize the claimant of the ground of fact upon which relief is sought ag'st the propeller, that he may admit or take issue thereon, or allege
28 matters in avoidance thereof.

Second exception. The statement of facts in said libel is not sufficient to entitle the libellants to any relief against The Propeller Mary J. Vaughan, and if admitted would not afford ground for a decree against her.

Dec. 6, 1864.

C. VAN SANTVOORD,
Proctor for Claimant of the Vaughan.

(Endorsed:) 18—483. U. S. dist. court. The propeller Mary J. Vaughan, her tackle, &c., impleaded, ads. John Gordon & others, libellants. Exceptions to libel. C. Van Santvoord, proctor for cl't of Vaughan. Filed Dec. 6th, 1864.

29 U. S. dist. court, south. dist. of N. Y.

THE STEAMBOAT TELEGRAPH & ANOTHER *ads.* JOHN GORDON, JAMES BRUCE, & ANOTHER.

The claimants of the steamboat Telegraph except to the libel in the above case, on the following grounds:

First. That it does not state what was the direction of the wind, nor the flow of the tide at the time of the collision complained of.

Second. That it does not state what course was pursued by the steamboat "Telegraph" or the propeller "Mary J. Vaughan," nor at what speed the said vessels were going, nor in what course or direction the said vessels were heading at the time of the collision or previous thereto.

Third. That the libellants cannot legally join in the same libel
30 both the said steamboat and said propeller, nor maintain a joint libel ag'st both said vessels.

Fourth. That said libel does not show or state in what respect the said steamboat *boat* Telegraph was in fault, or improperly managed, or conducted, and does not show or state any fault, misconduct, or negligence on the part of said steamboat Telegraph, or any defect in her tackle, apparel, or furniture, or any negligence, fault, or misconduct in those having said steamboat in charge.

Fifth. That the said libel does not show any right or cause of action or claim against the said steamboat Telegraph; that upon the facts shown in the libel the libellants' only remedy is ag'st the said propeller Mary J. Vaughan.

F. J. FITHIAN,
Proctor for Frederick A. Potts, Cl'm't of the St'boat Telegraph.

31 (Endorsed:) 18—483. U. S. dist. court, S. D. of N. Y. John Gordon & others ag'st The St'boat Telegraph & als. Exceptions of claimant of Telegraph to libel. F. J. Fithian, pr. for claimant. Filed Dec. 27, 1864.

32 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Thursday, the 23d day of Feb'y, in the year of our Lord one thousand eight hundred and sixty-five:

Present, the Honorable Sam'l R. Betts, district judge.

JOHN GORDON & ALS.
vs.
THE PROPELLER MARY J. VAUGHAN & THE St'boat Telegraph, &c.

This case having been heard on exceptions taken by the respective claimants of the propeller Mary J. Vaughn, & st'boat Telegraph, to the libel on file, and argued & submitted in brief by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed, by the court, that the exceptions to the libel by the claimants of the propeller & steamboat respectively, are hereby disallowed, with costs to the libellants to be taxed.

SAM'L R. BETTS.

33 (Indorsed:) Vol. —, No. —. United States district court for the southern district of New York. ——— ———, proctor for ———. Decree overruling exceptions with costs to be taxed. Filed the 23d day of Feb'y, 1865.

answer

34 To the Honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The answer of Thomas T. Vaughan, the claimant and owner of the propeller Mary J. Vaughan, to the libel and complaint of John Gordon, James Bruce, and Michael J. McAuliff, against the said propeller, her tackle, &c., impleaded with The Steamboat Telegraph, her tackle, &c., in a cause of collision, alleges as follows:

First. That this respondent was and is the owner of the said propeller Mary J. Vaughan, her tackle, apparel, and furniture.

Second. He admits, from information and belief, that at the time referred to in the first article of said libel, the canal-boat Sherman Lewis, in said article mentioned, had on board a quantity of barley, in course of transportation from Canada to the city of New York; but he avers, from information and belief, that there were not so many bushels of barley on board as alleged in said article, and that the barley on board was not of the value alleged therein; that he has no knowledge of the actual quantity of the barley on board, or of its value, and there-

35 fore denies and leaves the libellants to prove the quantity and value of the barley on board. That, as he is informed and believes, the said libellants had not, at the said time referred to, any title or interest in said barley, nor had or have any valid claim thereto, or for the loss or damage alleged in said libel; nor had the said libellants any concern with said barley, as consignees, except that if it had arrived in New York it might have gone into their hands as consignees or agents of other owners. And, further, that he has no knowledge or information sufficient to form a belief whether said boat Sherman Lewis was tight, staunch, or strong, and therefore denies the allegations in said libel in that behalf.

Third. He admits and alleges, on information and belief, that the said boat Sherman Lewis, with barley on board, was taken in tow by the said propeller Mary J. Vaughan, at Troy, to be towed to the city of New York; and that said propeller with said boat in tow on the port-side of said propeller, properly fastened at the bow and stern to said propeller by lines, & with a spring line to said canal-boat, as usual, and with another boat in tow on her starboard side, left Troy on the morning of Tuesday, October 25th, 1864, at about nine o'clock, a. m., bound to the city of New York; and that, so fastened as aforesaid, said

36 canal-boat Sherman Lewis was moved, governed, and controlled, for the most part, in her course and movements by said propeller and the master and persons in charge of and navigating said propeller.

Fourth. That, as this respondent is informed and believes, said propeller, with said canal-boat Sherman Lewis, with such barley as she had on board, and with the boat in tow on her starboard-side, proceeded on her voyage down the Hudson River towards New York, and on the morning of Wednesday, the 26th day of October, 1864, before daylight, had arrived below Newburg, and thence proceeded on the usual course off Polopels Island, headed between Cornwall and the point of Butter Hill, (by which last-mentioned point, on the usual course down the river, in that reach of the river, the river below the point, to the westward of a line from this point to Cold Spring below, is shut off,) until near Butter Hill Point, then rounded that point and headed down the river; and as soon as said propeller had got so far round said point that they could see down the river below, the lights of a steamboat, which afterwards proved to be the steamboat Telegraph, with a boat in tow on each side and another boat tailed on under the stern of the boat in tow on the starboard-side of said steamboat, coming up, and then opposite Cold Spring, at a distance of about a mile or more below the

37 propeller, were seen from the propeller. And as the said propeller going down with her tow, and the said steamboat Telegraph, with her tow, coming up, were approaching, a signal was made from the said steamboat Telegraph, by one blast of her steam-whistle, of her intention to pass to the right, and thereupon a response was made on said propeller, by one blast of her steam-whistle, signifying her assent to the course of said steamboat, as signalled, and the helm of the Vaughan was immediately put hard aport, and so continued until she was on a course to pass the said steamboat and her tow to the right, to westward, at a safe distance, when her helm was steadied; and then, on discovering that said steamboat was not making a course to pass said propeller and her tow to eastward, the propeller, which before that was going at the rate of about 5 miles an hour, was slowed, and her wheel again hove hard aport; and then her engine was stopped and backed, and was backing when the collision, in said libel referred to, happened, by the barge or boat on the port side of the steamboat Telegraph strik-

ing with her bow near or against the bow of the Sherman Lewis, with great force and violence, parting the lines which held said canal-boat to the propeller, staving in her bow, and causing so much damage and injury to said canal-boat, that in a short time she went down, with
38 the barley on board, in very deep water.

That, as this respondent is informed and believes, said collision & the damages arose from the negligence and fault of the navigating said steamboat Telegraph, in not porting their helm after making said signal, as aforesaid, or other fault of the persons in charge of the navigation of said steamboat Telegraph, in not making or keeping a course to pass said propeller and her tow to eastward, or the negligence or fault of the master or pilot of the said steamboat in not keeping a good look-out, or other negligence or fault of the master or persons navigating said steamboat Telegraph, and without any negligence or fault on the part of said propeller, which had good bright lights forward and aft, and was keeping a good look-out, and was otherwise attending to her duties. And further, from information and belief, to the end of this article of the answer, that the time of the collision was between three and four o'clock of the morning of the 26th October, 1864, or thereabouts, before daylight, the tide last of the ebb, wind down the river, and but little of it, the night clear, but shaded by the mountains, where the collision occurred on the west side of the river, at a point between off Butter Hill and Crow's Nest, between Newburg and Cold Spring, in
39 the Highlands. That the place where the collision occurred is short of half a mile wide, and the channel of the river is not straight, but it was sufficiently wide and deep for said steamboat, with her tow, to have passed said propeller, with her tow, without a collision, but for the negligence and mismanagement on the part of said steamboat Telegraph, by which the same, and the damage arising therefrom, was occasioned. This respondent, further answering, admits and alleges the boat in tow of the said steamboat Telegraph, which collided against the said canal-boat Sherman Lewis, was propelled, governed, and controlled by said steamboat, her master, or the person navigating said steamboat. And he further admits that the sinking of said canal-boat followed so soon after the collision that the master and crew had barely time to save themselves by jumping on to the barges after getting off their trunks and some other stuff from said canal-boat, and that two others saved themselves on a deck load of hoops that floated after the sinking of the canal-boat. And this respondent further answering, from information and belief, denies each and every allegation in the third article of said libel, except as hereinbefore expressly admitted.

40 Fifth. That he is ignorant whether the barley in the fourth article of said libel referred to, was totally lost by the sinking of said canal-boat Sherman Lewis, & he therefore does not admit, but denies, that it was so lost. And he denies, on information and belief, that the damage or loss to said libellants, or to the owners of the barley on board, amounted to the sum of ten thousand dollars, or thereabouts, or to half that sum; and for want of knowledge of the extent of damage consequent upon the collision, he denies the whole allegation as to the amount of said damage. And further answering, on information and belief, he denies that the said collision and consequent damage or loss was caused by any negligence, want of skill, or improper conduct of the persons navigating the said propeller Mary J. Vaughan, or of any of them, or by any negligence or fault on the part of said propeller. And he denies that there was any negligence or improper conduct or other fault on the part of said propeller, her master or crew,

in any manner conducing to produce or cause said collision, or any part of the damage arising therefrom. And he alleges, on information and belief, that the said collision, and the damage and loss consequent or arising therefrom, arose from the sole fault, as aforesaid, of the persons in charge of and navigating said steamboat Telegraph.

41 Sixth. He admits that the propeller Mary J. Vaughan, at the time of filing the libel herein, was lying within the port of New York, & in the southern district of New York.

Seventh. That all and singular the premises are true.

Wherefore the respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid as against The Propeller Mary J. Vaughan, her tackle, apparel, and other furniture, and to condemn the libellants in costs to this respondent.

THOMAS T. VAUGHAN,
Pr. A. D. LADD.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Before me came, this 30th March, 1865, Amasa D. Ladd, who, being sworn, says that he is attorney-in-fact of Thomas T. Vaughan, the above-named claimant and respondent; that the said Thomas T. Vaughan is absent from the city of New York, at his place of residence, at Whitehall, out of this district, and more than one hundred miles from the city of New York; that this respondent has read the foregoing answer, and knows the contents thereof, and that the same is true to his knowledge, except as to the matters stated on information and belief, and as to those matters he believes it to be true.

CHA'S W. NEWTON,
U. S. Comm'r, So. Dist. of N. Y.

[Rev. stamp, 5 cents, cancelled.]

42 (Indorsed:) 18—483. U. S. district court for the southern dist. of New York. The Propeller "Mary J. Vaughan," her tackle, &c., impleaded with The Steamboat "Telegraph," her tackle, &c., ag'st John Gordon, James Bruce, & Michael J. McAuliff, libellants. Claim & answer. C. Van Santvoord, proctor for The Propeller Vaughan & her claimants. Filed March 30, 1865.

43 District court of the United States for the southern district of York, in admiralty.

The answer of Frederick A. Potts, claimant and owners of the steamboat "Telegraph," to the libel of John Gordon, James Bruce, & Michael J. McAuliff, libellants, against the said Steamboat Telegraph, her tackle, apparel, and furniture, and against The Propeller Mary J. Vaughan, shows to this court:

First. By way of exceptions and objections to said libel, he says said libel ought not to be sustained by the court, because he says the said libel does not state or show in what respect or particulars the said steamboat Telegraph was in fault in the premises, or that said steamboat was in fault at all; that it does not appear by the said libel that those in charge of said steamboat Telegraph were guilty of any fault or negligence whatsoever in respect to the collision in said libel charged. That said libel does not allege any joint or common fault or negligenee on the part of the said steamboat "Telegraph," or those in charge of the same, and on the part of the said propeller Mary J. Vaughan, or those

in charge of the same; nor does said libel charge or allege any fault or negligence against said steamboat separately.

44 Second. To the first article of the said libel this claimant says he is ignorant, and has no knowledge respectively the matters and things in said articles stated, and he therefore neither admits or denies the same, and leaves the said libellants to make such proof in respect thereto as they shall be advised.

Third. To the second article in said libel, this claimant says he admits that at the time and place of the collision, in the said libel set forth, the said canal-boat Sherman Lewis was lashed to the port side of the said propeller, and headed down the river. As to the other allegation in the said second article, this libellant has no knowledge or information sufficient to form a belief respecting the same, and he neither admits or denies the same, but leaves said libellants to make such proof respecting the same as they shall be advised.

Fourth. To the third article of the said libel, this claimant says the allegations there are in some respects true and in others untrue. He admits the said allegation, except as follows, viz: He denies that the said barge, so lashed and fastened to the port side of said steamboat "Telegraph," came in collision with and struck the said canal-boat Sherman Lewis with great force, or any force, as is in said article

45 alleged; on the contrary, this claimant alleges the truth to be that the said canal-boat Sherman Lewis, so propelled by *by* said propeller Mary J. Vaughan, came into collision with said barge while the said barge and said steamboat "Telegraph" was remaining nearly or quite stationary. That said canal-boat Sherman Lewis sunk soon after, as this claimant is informed, but in what depth of water, or loaded with what cargo, or how her crew escaped from her, this claimant is not informed, and has no knowledge, and he does not admit the allegations in the libel in that respect.

Fifth. To the fourth article in said libel this claimant says he has no knowledge or information, except from said libel, whether any, or how much, barley or other property was lost by the sinking of said canal-boat; or as to whether the said libellants sustained any, or what, damage in consequence of said collision & sinking of said canal-boat Sherman Lewis; and he does not admit the allegations in said libel in that respect, but leaves said libellants to make such proof as they shall be advised in respect thereto. And the claimant denies, upon his information and belief, that the said collision was in any manner caused by the

46 negligence, misconduct, carelessness, want of skill, or improper conduct of the persons navigating and having charge of the said steamboat Telegraph, or the barges in her tow, or in any manner by the joint negligence, fault, or improper conduct or want of skill of the persons so navigating and having charge of said steamboat and barges and said propeller Mary J. Vaughan. On the contrary, this claimant alleges that the said collision and damages occurred wholly and solely from the sole fault and negligence, misconduct and want of skill on the part of the persons in charge of and navigating said propeller Mary J. Vaughan and said canal-boat Sherman Lewis, or some of them. And this claimant alleges the facts in regard to said collision to be substantially as follows:

That, on the night when said collision occurred, viz, the night in the libel stated, and shortly before said collision, the said steamboat Telegraph, with the barges in tow and alongside of her, as stated in said libel, was proceeding on a voyage up the Hudson River towards "Albany"

at a slow rate of speed, when, about three o'clock in the morning, and about opposite a point known as Stony Point, the night being clear, those in charge of said steamboat Telegraph sighted a red light coming down the river and about half a mile off, which red light proved to be-
long to, and be the light of, the propeller "Mary J. Vaughan;"
47 that, when said light was first sighted as aforesaid, said propeller was headed down the river and partly to the westward, and in the act of passing to west or larboard side of another steamboat ahead of this claimant's boat, also passing up the river; that, as soon as said propeller had so passed said steamboat, she immediately changed her course to the eastward, and in a course which, if persevered in, would bring said propeller across the bows of the said steamboat Telegraph so as either to collide with her or pass to the east or starboard side of her; that at this place the river was about one mile wide, and the night was clear; that said steamboat Telegraph was well and properly manned and found, had look-outs, and all proper and requisite signal-lights hoisted; that, even without lights, the said boats could be seen at least about half a mile apart; that correct and proper management and navigation (as this claimant is informed) required the said two steam vessels thus approaching each other should each sheer to the right or starboard side, and pass to the starboard of each, respectively; that accordingly as this claimant is informed and believes, the steersman of the Telegraph put his helm to port, and changed the course of said steamboat several points to the starboard and eastward, and blew her steam-whistle loudly, to which said propeller made no response; that the said propeller
48 did not, as she should have done, likewise sheer to the right, but kept on her course at full speed in a direction across the bows of the Telegraph; that as soon as those in charge of the Telegraph perceived there might be danger of a collision, the engines of the Telegraph were slowed, then stopped and reversed, so that, at the time of the contact, the steamer Telegraph was not under headway; that, shortly before the collision, the propeller Mary J. Vaughan did sheer to the right, but not sufficiently to pass clear, and, immediately after, the stern-piece of the said canal-boat Sherman Lewis was driven with great force and violence against the larboard bow of the said barge so as aforesaid lashed to larboard side of said steamer Telegraph, staving in several planks of said barge; the fastenings of said canal-boat Sherman Lewis were broken by the collision, and said canal-boat swung around across the bows of said steamer Telegraph, while the said propeller Mary J. Vaughan continued her course down the river, apparently under a full head of steam, for the distance, as claimant is informed, of three-fourths of a mile or thereabouts, before she could be stopped and brought to; that the steamer Telegraph then had stern-way on her, and was backing away from said canal-boat; that some of the persons on said canal-boat called to the steamboat Telegraph to take them off; that the said steamboat was then worked up to the canal-boat, and said persons taken off
49 and soon afterwards transferred to *to* the propeller "Mary J. Vaughan," whereupon the said steamboat "Telegraph" passed to the eastward of said canal-boat, and went on her course up the river. And this claimant alleges that, as he is informed and believes, the said steamboat Telegraph, and those in charge of her and of said barge, were wholly without fault in the matter of said collision, and that everything was done by them that could be legally or reasonably required to avoid such collision.

Sixth. To the fifth article of said libel this claimant says the same is true.

Seventh. To the sixth article of said libel this claimant says that all and singular the premises in said libel are not true.

Wherefore this libellant prays said libel may be dismissed with costs.

F. A. POTTS.

F. J. FITHIAN,
Proctor for Claimants Telegraph.

Sworn before me this 1st day of April, 1865.

JOHN McCAHILL,
Notary Public, N. Y.

50 (Indorsed:) 18—843. District court U. S. John Gordon et al. vs. Propeller Mary J. Vaughan & The Steamboat Telegraph & another. Answer of Frederick A. Potts, claimant of "Telegraph." Filed April 1st, 1865. F. J. Fithian, proctor for claimant.

51 At a stated term of the district court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on ———, the 20th day of April, in the year of our Lord one thousand eight hundred and sixty-six:

Present, the Honorable Charles L. Benedict, district judge.

Proceed's on hearing.—List of witnesses in order as read.

JOHN GORDON AND OTHERS
vs.
THE PROPELLER MARY J. VAUGHAN & THE Steamboat Telegraph. } 18—483.

This cause being called, ordered hearing. Pleadings read.

Evidence for libellants:

Deposition of John Gordon, May 20th, 1865 ..... Read.
" " Mandred Lewis, " 19th, " ..... "
Letter of Thomas Gordon & Co., July 13th, " & bill of lading, marked Ex. No. 1, "C. L. B." ..... "

Evidence for claimant of the M. J. Vaughan:

Patrick Carey, deposition, June 9, 1865 ..... "
William Rogers, " " " " ..... "
Rufus Brayton, " " 10th," ..... "

Evidence for claimant of the Telegraph:

Ralph A. Smith, deposition, June 14, 1865 ..... "
Cleophas Hopton, " " 15, " ..... "
Levi Deyo, " " 15, " ..... "
Zachariah Scutt, " " 15, " ..... "
Michael Stanton, " " 20, " ..... "
William O. Hopkins, " " 20, " ..... "
Charles Scutt, " " 20, " ..... "
Joseph Buttolph, " " 24, " ..... "
Sherman Lewis," " 24, " ..... "

52 Asa Thather, deposition, Aug. 3, 1865, ... Read.

Evidence for cl't of the "M. J. Vaughan:"

Patrick Carey, 2nd deposition, Aug. 14, 1865 ..... "
Rufus Brayton, " " " " ..... "
Ann Brayton, " " " " ..... "
Thomas Lloyd, " " 21, " ..... "

April 23rd & 24th.—Cause argued.—C. A. V.

53 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this twentieth day of May in the year of our Lord one thousand eight hundred and sixty-five, I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me at my office, at 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, John Gordon, to testify and the truth to say, on the part and behalf of the libellants in a certain suit or matter of controversy, now depending and undetermined, in the district court of
54 the United States for the southern district of New York, at New York City, wherein John Gordon et als. are libellants vs. The Propeller Mary J. Vaughan, & Steamboat Telegraph, her tackle, &c., respondents.

And the said John Gordon, being about the age of years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said John Gordon, and he did thereupon depose, testify, and say as follows, viz:

My firm is Gordon, Bruce and McAuliff. The business is general commission business, among other things, receiving consignments of grain. The grain described in Exhibit "A," was the grain consigned to us. It never reached us. I think it was the 26th of October that the Sherman Lewis was lost. I received the bill of lading the same day I heard of the loss of the grain. The business of O. & J. Lynch, in St. Timothy, is dealers in grain, &c. We have received grain from O. & J. Lynch before this consignment. In the months of June and July last, four cargoes were received by us from the Lynches. In the course of our business we made advances on these consignments. Such advances were made before the cargoes themselves were realized. On the 27th of October last, the market value of barley was quoted for Canada East
55 barley $1 76, varying a few cents according to quality. This cargo was Canada East barley.

By Mr. Van Santvoord:

Previous to the 27th of October, I had received a letter from my brother's firm at Montreal, our agents there, advising us that Lynch & Co. would send to us two cargoes of barley, one by barge "R. H.

Adams," and one by barge "Sherman Lewis." The following are the terms of the advice: "Barges R. H. Adams, (2,894 $\frac{37}{48}$ barley,) & Sherman Lewis, (3,684 $\frac{3}{48}$ barley,) shipped by Lynch & Co., will report to you. We will likely hand you bills lading to-morrow." Next we received Exhibit "A," or a duplicate of it, on the 25th or 26th of October last. I never saw the barley by the "Sherman Lewis;" might have seen a sample; was not present at the shipment of same. I know nothing of the quantity of the barley shipped of my own knowledge. I know nothing of the quality of it, except from the fact of its coming from Canada East. No advance was made on the barley of the Sherman Lewis to my knowledge. The barley never did reach us, as it was lost. If it had arrived here and been reported, it would have come into our hands in due course, to be disposed of by us as commission merchants. We had no other interest in it than we would have had as commission merchants and consignees for sale if it had arrived, unless our agents in Montreal had advanced on it. I don't remember receiving any
56 advices from our agents in Montreal as to their advancing on it. I don't remember of ever hearing of any controversy as to the quantity of barley shipped on the "Sherman Lewis." There was no other consignment with reference to this cargo, other than the letter and Ex. "A;" that is all that we ever do receive.

Re-direct:

Thomas Gordon & Co., of Montreal, were authorized by us to make advances for us upon such consignments, at our risk. The former consignments from the Lynches came through that agency in the same way. I know C. Copeland, of Montreal; he is a freighter or transportation agent; agent among others of boats or transient boats. His business as such agent is procuring freight for boats of this description. I have paid drafts drawn by the Lynches, & I believe the signature endorsed on Ex. "A," to be one of the Lynches.

JOHN GORDON.

Subscribed & sworn to before me this 20th day of May, 1865.

JOHN A. OSBORN,
U. S. Comm'r.

57 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is material & necessary in the cause in the caption of the said deposition named, and that he

I further certify that no notification of the time and place of taking the said deposition signed by me, was made out & served on the adverse parties, to be present at the taking of the deposition and to put interrog-

atories, if he or they might think fit, because the proctors for the respective parties consented to the taking of the deposition without the regular legal notice.

58 I further certify that, on the 20th day of May, in the year of our Lord one thousand eight hundred and sixty-five, I was attended by the proctors of the respective parties, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness & from his statement, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of filing the same with my own hand in the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and seal this 20th day of May, in the year of our Lord one thousand eight hundred & sixty-five, and of the independence of the United States the eighty-ninth.

JOHN A. OSBORN,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, the Second Circuit.

59 (Indorsed:) United States district court for the southern district of New York. John Gordon et als. vs. The Propeller "Mary J. Vaughan" & Steamboat "Telegraph," her tackle, &c. Depositions on the part of libellants taken before John A. Osborn, United States commissioner, on the 20th day of May, 1865. John Gordon. Filed June 26th, 1865.

60 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this nineteenth day of May, in the year of our Lord one thousand eight hundred and sixty-five, I, John A, Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress, entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the United States court building, 39 and 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Mandred Lewis, to testify and the truth to say, on the part and behalf of the libellants in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the southern dist. of New York, at New York City in the district aforesaid, wherein John Gordon et al., libellants, ag'st The Propeller "Mary J. Vaughan," & Steamboat "Telegraph," her tackle, &c., respondents.

And the said Mandred Lewis, being about the age of years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Mandrid Lewis, and he did thereupon depose, testify, and say as follows, viz:

I reside at Chatauque, Franklin Co., N. Y.; my business formerly boating; it was boating last fall; I was on the Sherman Lewis, a canal-boat; I was captain of her last fall; in the month of October last, I started from St. Timothy, Canada—the fore part of October; was laden with barley, & hoops on deck; her hold was mostly full of barley; Owen J. Lynch loaded her; (paper shown witness) that is the bill of lading.

61 I don't know exactly how much barley we had; very nearly, I should think, 4,000 bushels. Mr. C. Copeland is of Montreal; I took the order from him and loaded for him. We went from St. Timothy to the foot of the Beauharnais Canal. The condition of my boat was very good when we started; we went from the Beauharnais Canal, through the Lachine Canal, to Montreal; thence we were towed by a steamer to Lovell, to the Chambery River, to Chambery; from there we went through the canal to St. John's, Canada; there we took the steamer from St. John's, Canada, 25 miles north of Rouse's Point, to Whitehall; thence to Troy. We arrived at Troy last October, the 25th, in the morning. The condition of the boat and cargo was then good. At Troy I made a bargain with Capt. Brayton, to tow me to New York, The Mary J. Vaughan was the vessel that towed me—a propeller. Capt. Rufus A. Brayton was in command of the propeller; he was to tow me to N. Y. for $25 00. He took me in tow; put us alongside; was fastened to him by bow line, stern line, & spring line; we had some four lines to us; we were fastened to him on the larboard side down the river. The length of my boat was 88½ feet; with reference to the length of the propeller, I should think it took up about 10 feet of the propeller; I don't think the propeller was quite as long as my boat. The Sherman

62 Lewis' bow was ahead of the bow of the propeller. We got off from Troy that morning about eleven o'clock. All the boats in tow was the Sherman Lewis and the R. M. Adams, when the propeller started from Troy; the Adams was on the other side, lashed to the propeller; Brayton was in command of the propeller when we started, and continued such as far as we went. Sherman Lewis was captain of the canal-boat R. M. Adams. My boat and the Adams had made the trip together all the way through. Nothing happened when we started until we got in the neighborhood of Cold Spring, when we sunk; this was above Cold Spring about 1½ miles. The width of the river where we sunk was about 1½ miles wide. Have sailed up and down the river before. I think we were not far from the middle of the river when we sunk; we were past the entrance of the Highlands in the bay. I went on deck about 3 o'clock in the morning; went forward to try the pumps to see if there was any water in my boat, and there was not; went back into the cabin & staid there about 15 minutes and heard a faint whistle, & at that instant we had the collision. I ran on deck as quick as I could & our steamer, the Vaughan, was almost out of sight, leaving us; that is, we were detached from her. I think perhaps it was 20

63 minutes after my boat sunk outright; my boat had been struck in the bow. I got on the barge that was beside the Telegraph; my two men were left on my boat; the hoops floated & the two men were on them & taken off. I saw my boat sink; she had the same cargo of barley on board when she sank as when she started; none of the cargo had been taken out. The bill of lading is signed by Copeland. I

did not sign it. When I went on deck at 3 a. m., the weather was very mild; no wind, no rain; a little; quite starlight. There was a light on my canal-boat, on the bow, about 5 or 6 feet above the water; it was one of our common signal lights. I suppose the vessel that struck us was a barge alongside of the steamer Telegraph, her name I don't know. This barge was in tow of the Telegraph, lashed to her. The Telegraph is a side-wheel steamer. The barge I got on was on the opposite side of the Telegraph; we (boat Sherman Lewis) swung across the Telegraph & barge's bows, putting our stern to the eastward or Cold Spring side. I had three men beside myself on my boat; one man got on board of the barge with me. There was no wind; river smooth. When my boat swung around, I saw the bow of my boat settle down. The barge I got on was lashed to the side of the Telegraph; she had a barge on each side of her. The Telegraph had a barge
64 astern of the barge on the starboard side going up the river. The depth of the water where the Sherman Lewis sunk was 150 feet. The barge that struck our boat was larger & longer than ours. From the time we left Troy Capt. Brayton had the direction of the tow and the boats up to the time of the collision. My boat was solely dependant on the Vaughan for any action & direction she might take. I was at St. Timothy when my boat was loading; saw the barley put on board. Our boat was consigned to the "Northern Transportation Company." I did not see the lights of the Telegraph until after we struck. I was not on deck until after the collision. I hurried on deck when I heard the whistle. The course of the river was a pretty straight course & we were running straight down. The first turn I think in the river is at West Point.

X-'d by Mr. Fithian, for the claimants of the Telegraph:

The first thing I heard was when I was in the cabin—a faint whistle. The whistle was the whistle of the Mary J. Vaughan; the next thing was a heavy blow. There was hardly any interval between the whistle and the blow. My cabin was in the after part of my boat. The first thing I saw when I ran on deck was the "Mary J. Vaughan" going out of sight. The Vaughan was passing the steamer &
65 just out of sight, she was going fast, as she went out of sight pretty quick. My boat was headed down the river; when I ran on deck her headway was stopped. The steamboat Telegraph & her barges lay right to our bows—a space of 5 or 6 feet, perhaps, from our bows—can't tell exactly, very close; a few minutes after my boat began to swing around with the current across the bows of the Telegraph & her barges. My boat lay right crossway of the river when I got off of her on to the barge before alluded to. I got off from the stern of my boat; the Vaughan then was out of sight. The Vaughan came back after I got on to the barge; can't tell how long afterwards, probably inside of an half hour; when she came back the Vaughan was headed up the river; she came up to the stern of the "Lewis," but not very close; the Lewis was then sinking; she did not make fast to the Lewis, but made fast to the hoops.

X-'d by Mr. Van Sandford, for the Vaughan:

The barley was brought aboard in bags and discharged in the hold. Those bags were supposed to be weighed before they were brought down to the boat; I did not weigh them myself; I was present at their weighing and I kept tally of the weighing; I have not got it; thoset allies sunk with the obat. They weighed some 20 bags on the scale in the storehouse, about 2 rods or some 30 feet from the boat;

66 the warehouse was on the wharf; the bags were carried, after weighing, on men's shoulders. Don't know that all the bags that were weighed were carried on board the boat. I refused to sign the shipping bill at St. Timothy, because it was contrary to our understanding.

Q. Did you not refuse to sign a shipping bill or receipt; if so, what was the reason?

A. Because they wouldn't do as they agreed.

Q. Who agreed?

A. Mr. Owen J. Lynch. They wouldn't advance any freight.

Q. Did you not refuse to sign shipping bill or receipt because of a discovery that they didn't send on board all the bags of barley that were weighed?

A. No, sir. I did not furnish Mr. Copeland or anybody else with a statement of barley that had been weighed. Copeland had no authority to sign the bill for me; he did it contrary to my orders, before we got to Montreal. He requested my father and I to sign it at Montreal; I declined. I don't know on what information Mr. Copeland signed that bill. I refused to sign Owen J. Lynch's bill, but did not refuse to sign for Mr. Copeland. I knew nothing about Mr. Lynch, only to load for him; I was sent there to load by Mr. Copeland, of Montreal; I got an advance from Mr. Copeland; he asked me to sign this bill, which
67 bill is marked A., J. A. O., which I refused upon the ground above stated.

Q. Haven't you stated that you refused to sign a shipping-bill or receipt, because you caught them stealing four bags out of twenty?

A. I have not stated any such thing. I can't say that I ever had any dispute with any man about the quantity of barley in the boat; I can say I never did. I know Mr. Stark & Mr. Ladd, & never stated to either of them that I refused to sign a bill or receipt, because four bags out of twenty were stolen. I am acquainted with some of the points along the river where the collision occurred, and I don't profess to be a steamboat man. I don't know where Butter Hill is, or the Crow's Nest, or the Warrygat; I have heard of these places. I know where a Stony Point is, above Newburg; am not acquainted as pilots ought to be. The sinking was below Newburg Bay; it was after we entered the Highlands; I didn't notice whether we were in the shades of the Highlands; I should think we were in the middle of the river. This judgment was formed by an observation made before the steamer got back to us. I saw the Vaughan pass the Telegraph after the collision; she passed on the west side of the Telegraph. My boat was separated from the Vaughan; lines were parted, & the Vaughan was pretty nearly out of sight. Don't know much about steamboat signals; know that it is customary
68 for steamboats to signal each other, & to answer. Can't say whether the whistle was the escape of steam only or not.

Re-direct:

The business of the Lynches, at St. Timothy, are merchants and shippers of grain; the storehouse from which this grain was taken, was the Lynches. We were two days loading both boats; one day loading the Sherman Lewis, working between daylight and dark. The storehouse was right in front of the dock where my boat lay; the scales could not be seen from the boat. My deck hands did not carry any of the grain. The tonnage of my boat was 55. I saw some of the barley weighed. We carried it at 42 lbs.; it was weighed 48 lbs. My canal-boat might probably have carried from 400 to 500 bushels more under

deck. Our freight is charged on the bushel, counting 42 pounds to the bushel.

Q. After the grain was weighed in your presence, at the scales, as you have stated, what became of it?

A. It went aboard of the boat.

Q. What was the number of bushels you saw weighed, to your best recollection?

A. It was about 3,800 bushels at 42 lbs. per bushel.

Re-cross by Mr. Fithian:

Q. Do you mean to swear positively that you know, of your own
69 knowledge, that every bag of barley you *you* saw weighed, was put on your boat?

A. I don't swear any such thing.

Re-cross by Van Sandford:

What barley I had on board, I had in the hold; hoops on deck from 8 feet of the bow to about 8 feet of the stern, & out flush to the sides of the boat, and 6 feet from the deck of the boat; stowed very tight together; hatches covered up. The cabin was aft with door opening aft; when coming upon stern deck I could see over the hoops down the river. I got up on to the hoops when I ran up on deck, and went clear to the bow, and saw the water running in where she was struck. At that time the boats were separated; I mean my boat and the one that struck us. The stern of my boat was still above water, but the lines to the Vaughan were parted, and we were astern of the Vaughan, & when I went forward she was swinging stern across the river; she swung right across the bows of the Telegraph & her barges; she swung so that our stern quarter came right alongside the barge's bow; she was a very short time swinging around as described. The current would very naturally swing us around quick. As we were swinging around, the Telegraph had stopped; was not working her engine. I don't know whether the Telegraph had headway or not; I should think not much
70 headway through the water. The Telegraph was larger than the Vaughan; she was higher & wider. From the stern of my boat I could see the length of my boat, but not the deck of the bow. My boat was struck in the larboard side of the stem, right in the face. My boat had a stem-piece; the blow was close to the left side of the stem-piece; the larboard side of the stem-piece.

Re-direct:

Q. You say you saw the barley weighed in bags; how was it taken from the scales.

A. By men; and they went directly through the door on the dock on to the boat; did not see any of it taken in any *an*other direction, except to the boat. I took the tally of all that was put in my boat, or all that was weighed; I say that the same men that took the loaded bags brought back the empty ones.

Re-cross:

I did not keep tally at the boat; didn't keep any tally, except at the scales in the storehouse.

Re-direct:

Q. How many doors are there leading from the storehouse to the dock?

A. Only one entrance to the storehouse on that side; it is an open space between the storehouse and the dock. I couldn't say that all the

bags passed out of that door; saw none pass out of any other door; from where I stood, I should have seen bags pass out of other doors, if any did pass.

Re-cross:

71 At the time my boat was loaded, there was nothing that led me to suspect that I had not on board all the barley that was weighed on the scales.

Q. Was there a time, subsequent, & before your boat was sunk, that led you to suspect that you had not all the barley weighed at the scales?

A. There was something of a dispute between my father and the Lynches, with reference to the barley shipped on his boat, the "R. M. Adams." My father did not count in at either boat. The Adams was loaded at the same place, by the same men, & same warehouse, & I tallied both boats.

Re-direct:

My boat is about 14½ feet wide; the Adams the same; the Vaughan was a little wider, perhaps, than ours. The two barges of the Telegraph were about the same width; this width was, perhaps, about 25 or 30 feet each; the Telegraph was perhaps more than 30 feet wide. There was a great sufficiency of room in the river for both those boats, to pass without colliding.

MANDR'D LEWIS.

Subscribed & sworn to before me this 19th day of May, 1865.
JOHN A. OSBORN, *U. S. Com'r.*

72 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause in the caption of the said deposition named, and that he

I further certify that no notification of the time and place of taking the said deposition signed by me, was made out and served on the adverse party, to be present at the taking of the said deposition, and to put interrogatories, if he or they might think fit, because the proctors for the respective parties consented to the taking of the deposition without the regular legal notice.

I further certify that, on the 19th day of May, in the year of our Lord one thousand eight hundred and sixty-five, I was attended by the proctors of the respective parties, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and noth-

ing but the truth, and the deposition was by me reduced to writing in the presence of the witness and from his statement; and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of filing the court for which the same was taken.

And I do further certify that I am not of counsel or attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand and seal this 19th day of May, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the eighty-ninth.

{ SEAL'S } { PLACE. }

JOHN A. OSBORN,
United States Commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

73 Filed the 26th day of June, 1865.

74 MONTREAL, 13*th July*, 1865.

ALFRED OGDEN, Esq.,
V. P. Orient Mutual Insurance Comp'y, New York:

ve. did

AR: The facts with regard to the consignment of two loads of barley & st. & O. Lynch, of Beauharnois, to Messrs. Gordon, Bruce & McAuliff, to S ew York, in the month of October last, are as follows:
live e are the agents of Messrs. Gordon, Bruce & McAuliff, of Montreal, was have general authority to procure consignments to them, and to e advances on their account on all shipments to them. In October last, and some days previous to the 25th of that month, we agreed with Messrs. O. & J. Lynch, of Beauharnois, to consign two loads of barley by the canal-boats Sherman Lewis and R. M. Adams, to Messrs. Gordon, Bruce & McAuliff, under which the barley was started for New York, we having before that engaged for the Messrs. Lynch the boats from Mr. C. Copeland, of Montreal, to ship the barley to New York.

As to these particular loads of barley, we had special authority to advance upon them by drafts on Gordon, Bruce & McAuliff, at thirty days, of which Messrs. Lynch were advised before the bill of lading
75 was sent. The bill, which we enclose, is the original bill under which the barley was consigned to Gordon, Bruce & McAuliff, by Messrs. Lynch, by the canal-boat Sherman Lewis. We forwarded it on the 25th of October to Gordon, Bruce & McAuliff, endorsed by Messrs. O. & J. Lynch, and at their request. The signature of the endorsement is by Owen Lynch, of the firm of O. & J. Lynch, with whose handwriting the writer is acquainted.

We received this bill from Messrs. O. & J. Lynch, and forwarded it to Gordon, Bruce & McAuliff, at Messrs. Lynch's request, and advanced upon it at the same time, as agents of Messrs. Gordon, Bruce & McAuliff, the sum of $29 50 for premium of insurance upon the barley.

At the time Messrs. Lynch & Co. were also indebted to Messrs. Gordon, Bruce & McAuliff in the sum of $111 24 for advances theretofore made by us to them, as agents of Gordon, Bruce & McAuliff.

Very resp'y, your most ob't serv't,

THOMAS GORDON & CO.

We consent that the above letter be received in evidence in this case,

subject to the same objections to its relevancy, as if Thomas Gordon had been introduced as a witness on this trial.

New York, July 21st, 1865.

F. J. FITHIAN,
Proctor for F. A. Potts.
C. VAN SANTVOORD,
Proctor for the Cl'm't of the Vaughan.

76

[VIGNETTE.]

Hanstell & Co., stationers, 23 Nassau street, N. Y.

3,684 3/48 bushels of barley.
Lighterage to be charged to O. & J. Lynch.

Paid one hundred and twenty-five dollars, in gold, on acc't. Freight to be paid to the Northern Transportation Line, and 2½ % commission on freight.

Shipped, in good order and condition, by O. & J. Lynch, of Beauharnois, in and upon the boat Sherman Lewis, whereof Mandred Lewis, for this present voyage, is master, now lying in the port of and bound for Albany or New York, viz, three thousand six hundred and eighty-four 3/48 bushels of barley, (forty-eight pounds per bushel,) being marked and numbered as per margin, and are to be delivered in the like good order and well condition, at the aforesaid port of Albany or New York, (the act of God, the Queen's enemies, fire & accident, the dangers of the seas and navigation only excepted,) and all and every of whatsoever nature, be and kind excepted,) unto the order of O. & J. Lynch, or to their assigns, he or they paying freight for the said goods, at eight cents per bushel to Albany, or nine cents per bushel to New York, in gold, with average.

In witness whereof the master or purser of the said boat hath affirmed to three bills of lading, all of this tenor and date; one of which being accomplished, the rest to stand void.

Dated at Montreal this seventh day of October, 1864.

C. COPELAND,
For Mandrid Lewis.

W. TIMOTHY.

77 Deliver to order Messrs. Gordon, Bruce & McAuliff.

O. & J. LYNCH:

Pay order of the within property to order of Tho's Gordon & Co.
GORDON, BRUCE & McAULIFF.

(Endorsed:) Bill of lading & statement of Thomas Gordon, with stipulation of parties. Ex. 1, C. L. B.

78 UNITED STATES OF AMERICA,
Southern District of New York.
City, County, and State of New York, ss:

Be it remembered that, on this ninth day of June, in the year of our Lord one thousand eight hundred and sixty, I, George F. Betts, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient

taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Conmore convenient taking of affidavits and bail in civil causes depending gress entitled "An act in addition to an act entitled 'An act for the in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call, and cause to be and personally appear before me, at my office, at the United States court building, 39 and 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Patrick Cary, to testify and the truth to say, on the part and behalf of the claimants of the propeller "Mary J. Vaughan," in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the southern district of New York, at New York City, in the district aforesaid, wherein John Gordon et al. are libellants, against The Propeller "Mary J. Vaughn" and Steamboat "Telegraph," &c.

And the said Patrick Cary, being about the age of twenty-four years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controoersy aforesaid, I did carefully examine the said Patrick Cary, and he the thereupon depose, testify, and say as follows, viz:

84 m a boatman, and have been 7 years on barges, sloops, schooners, eamers; on sloop Champlain, that was the first, from Troy around taten Island by way of New York; George Eagle was her captain; egra s in Troy; I went as cook and hand on her; it is 4 years ago; I Cap on her one season. Next on sloop Henry Gage, on North River, ne line; W'm Lobdell was her master; I was second hand on her one season. Next on barge Gen'l Worth. Then on sch'r W'm Maury, on North River and Long Island Sound; George Eagle was her master; I was second hand on her. I took my trick at the wheel on the Maury—

79 any place it was required—day or night. We used to run light-handed on her, and sometimes I had to stand double watch. I had an opportunity to learn the course of the channel, & how to steer on those vessels. I was with my brother-in-law, George Eagle, & he took a good deal of pains to learn me the channel & put me ahead. I was on the propeller Vaughan last part of the season of 1864, from June 22nd; done everything that was required. I fired, worked on deck, & I steered when they asked me; Rufus Brayton was her capt'n. When we had pilots aboard I did not take a turn at the wheel, but when we had no pilots aboard I steered when I was asked. The Vaughan was 58 to 60 tons; 17 to 18 feet wide; length on deck 90 to 95 feet from her stern to her fantail. She has got a house on deck, in which is a pilot-house, fire-room, kitchen, engine-room, & dining-room. There is a door from the fire-room on each side; kitchen opens on the port side; engine-room opens on the starboard side; dining room on port side; pilot-house is forward; stands about 4 steps up from deck; opens all around by windows & by two doors; go into it from port or starboard—either side. There is a forecastle ahead of pilot-house; crew sleep in forecastle; 5 compose the crew—capt'n, engineer, 2nd engineer, me, and the cook. That was the crew at the time of this accident. We hadn't a cook on board that trip—the captain's wife did the cooking. I was on board at the time of collision. I was in pilot-house at time of collision, at

80 the wheel; had been there 12 o'clock. I was steering from 12 o'clock till time of collision. We started from Troy, bound to

30 rk. Capt. got up & blowed our whistle one blast; and I was ng our wheel hard aport, & he then took hold & helped me heave . Capt. was sitting on the lounge, & got right up and answered the Telegraph's whistle. She hadn't blowed two seconds before we answered. It was as loud & long a blast as we generally blow for a signal. The night was very still—no wind. I had blowed my whistle before, when off Polypus Island, as a signal to the propeller we met there—the same one I spoke of above. I did not blow any signal below Butter Hill, except this one, in answer to the Telegraph. When I blowed the signal off Polypus Island I had not seen the Telegraph; I couldn't see her, nor where she was—Butter Hill prevented. Putting our helm aport had the effect to steer us in to the westward. We kept on that course until the capt. saw that we had opened a gap wide enough to clear the Telegraph to the westward. I saw that we had. Capt. then steadied her, having hold of the wheel, & in about half a minute we saw that we were closing up again by the Telegraph—by the course of the Telegraph; then we slowed her, stopped her, and rang to back her. She had been backing about half a minute before they struck. Nothing more
81 was done with our wheel before we struck, except to put it hard aport. That was done as soon as the gap was closing; & after we had steadied her the canal-boat on our port side, & the barge on the Telegraph's port side, struck; they came together bow & bow. W were heading to the westward at the time. I couldn't tell where t hit, because of the hoops on the deck of the canal-boat. We were ab half a mile apart when the Telegraph gave us the signal; couldn't much difference when we replied. We had slowed & stopped, and w backing when the boats came together; had been backing half a min to a minute when they came together; couldn't say for certain. place of the collision was between Little Stony Point and Crows' Nest; it was between off Butter Hill and Crows' Nest, and I should judge nearest the west shore, to the westward of the middle of the river. The land there is high; there is a shade; we were in that shade. There was nothing in the way to prevent the Telegraph passing to the eastward after the signal. There was channel room enough where we were for lots of tows to go through to the eastward; channel there must be half a mile wide. She should have put her helm aport to have passed to the eastward. If she had put her helm aport at the time of the signal she would have passed to the eastward of us. I should think
82 she could have passed to the eastward if she had put her helm aport any time after the signal. There could not have been any collision if she had put her helm aport. If she had kept on her course, straight along up the river, we should not have hit. If she had kept straight up the river, after the signals, she would have passed us to the eastward. By the collision the line from the bow of one canal-boat to another parted. The canal-boat that was struck was shoved back under the bows of the Telegraph's tow. The Vaughan was hit by the guards of the barge on the port side of the Telegraph, and the Vaughan's bulwarks broken about 10 or 12 feet. The head of the canal-boat, on our starboard side, swung out by the parting of the line, and we had to go ahead and get her alongside. We had to go ahead & back to get her head in; we couldn't get her head in lying still. After the collision we tried to turn the propeller around, & we couldn't by putting her helm astarboard. Then we stopped, and got the lines to the boat on our starboard side fixed so as to hold her head in, & that we could turn around. Then we got her fast, & went around to the eastward of the Telegraph, around her stern, to look for the sunken boat. After round-

ing her stern we came up again. We took the capt. of the sunken
83 boat off the barge, & then went & saw the sunken boat. Her bow was sunk, & her stern was out of water. We got the men off the hoops, & backed away from her, & she sunk. Then we got alongside the hoops, & towed them into Cold Spring; tide was about slack-water at that time. The usual crew on vessels of the size of the Vaughan is five, including the cook—captain, engineer, 2nd engineer, cook, & deck hand. That was the crew we had.

Cross-examined by Mr. Fithian:

I had been sailing in the sch'r W'm Maury as 2d hand in 1864, & before I went on the Vaughan. I had then been sailing on her a year & five months. We had no pilot on the Vaughan this trip—only the capt. We usually carried a pilot. I don't know why he hadn't a pilot this trip. The capt's wife cooked for the men this trip. She hadn't been on before. The engineers fired and ran her. They had nothing to do with the management of the boat, only working one engine. Capt. had steered that night before I took the wheel. I was asleep forward while he steered. Capt. took the helm from me that night at 6 o'clock, at Hudson. I was called up at 12. Capt. has a place; it is off the engine-room; his berth to sleep in is in the dining-room. That room was also occupied by the captain's wife when she was on board. Capt. stayed in the pilot-house all the time, from when I took the helm until the collision. He laid down about 15 or 20 minutes after I took the helm.
84 The first time capt. woke up was when the whistle was blowed off Polypus Island. I blew that whistle. I hadn't seen the Telegraph then. The propeller blowed her whistle first, and answered her. Capt. of our boat then got up. He was going to stay up till morning. He didn't lay down again until after collision. It might have been 5 minutes after capt. got up before we saw the Telegraph—might be more or less—had no time-piece. Capt. went to light his pipe to take a smoke; he lit in the pilot-house. It was 3 or 4 minutes after that before we saw the Telegraph's lights—before we heard her whistle. We were going 6 or 7 knots an hour when we first saw the Telegraph's lights, as near as I can judge. When I first saw the Telegraph's lights I was off Butter Hill—had rounded the point, & the Telegraph was about a mile off. I was then steering a course direct down the river. The Telegraph seemed to be coming up the river. Could see the lights of a boat 2 or 3 miles off that night if the view was straight. I should say Polypus Island was a mile above Butter Hill Point. When I saw the Telegraph's lights I was near the centre of the river, but a little to the westward of the centre. The Telegraph was a little to the westward of me when I first saw her. When she blowed her whistle she was to the westward of me.
Capt. was sitting on lounge when Telegraph blew her whistle,
85 getting ready to take the wheel. He then answered the whistle. I was putting my helm aport, when I saw him get up to take hold of the . After he got through blowing the whistle, he took hold & helped me put the helm aport. We turned our vessel about one point, so that she headed right to the west shore. Then the capt. steadied her; that is, he stopped her from turning any more. Continued in that course after she was steadied half a minute, I think, before we saw that the gap was closing again; then we put our helm hard aport, that threw her head more to the westward, then rang the bell to slow her. We were then pointing cornerwise the river—almost across the river—so that our bow faced to the west shore, & our stern to the east shore. The collision parted all the lines that held the sunken boat to

us. We got below the Telegraph, & run in pretty well to the westward before we turned around to come up again. Then we turned to the eastward, around the Telegraph, & made a circuit about, & came up on the starboard side of the Telegraph—alongside of her. She had a barge on the starboard side, and another behind that tailed on to it. We came up to the barge that was alongside the Telegraph. The men we took off were on that. The injured boat then lay at the bow of the Telegraph somewhere. I couldn't see her, because the barges were between me and her. We then worked forward up the river around the bow
86 of the Telegraph to the injured boat. The Telegraph afterwards passed up to the eastward of us. I didn't notice which way we were heading when the Telegraph passed us. When we got to the injured boat her stern was pointing to the east shore, almost crosswise of the river. We went close enough to her to take the men off—close alongside. We then headed in to the west shore. I can't tell which side of the canal boat we came up on. When we rang to slow our engine the Telegraph was about one-eighth of a mile off. We rang quick, immediately, to slow, stop, back. These bells were answered by the engineers. I know by the way she was stopped. I don't know how long it takes to stop our boat dead in the water when she is going 6 knots. It would take ½ minute to get the wheel reversing. I suppose it would take a good engineer 10 seconds to do it. I never got 4 bells in quick succession. I can't tell in the pilot-house which way the engine is working. I only know about the bells. We were stopped in the water when I found that our bulwarks were broken. This was as quick as I could get out of the pilot-house after she struck. I let go of the helm & came out. The capt. had hold of the helm. I then went right up forward to see what damage was done. I then saw the canal-boat we had been towing on our port side passing astern of us on our port side ahead of the Telegraph. The barge on the port side of the Telegraph was then
87 alongside of us. I saw the side of the barge—30 feet on the bow of her. Could see the whole of the side of the barge. When I got forward I could touch the barge; was near enough to touch the guards between amidships & the bow. I next went down in our boat into the forecastle to see if we were making any water. Was there may be a minute. Went back then to engine-room. Then I stood there. Couldn't see from there where the Telegraph was. Was there ½ minute, then went & spoke to capt. on deck; not in pilot-house. At this time the Telegraph & her barges were astern of us. Capt. then went into pilot-house, & was going to turn around, & found he couldn't until he got the other boat fast. When we started to turn around, I first discovered that the lines were too loose to do it. That might have been 2 or 3 minutes after the collision.

Direct resumed:

There were four windows open in the pilot-house, 2 forward windows & 2 alongside, as you stand; the other 2 are aft. Can't say whether 2 aft were closed or open. The Telegraph is a side-wheel steamer. She is double as big as the Vaughan, I should judge. Wind was down the river, I judge. None at all right there among the mountains. Kind of puffy, what there was.

Mr. Lyon waives cross-examination.

PATRICK CAREY.

Subscribed & sworn to this 9th day of June, A. D. 1865, before me.

GEO. F. BETTS.
U. S. Com'r.

88 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this day of , in the year of our Lord, one thousand eight hundred and sixty- , I, , a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the United States court building, 39 and 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, William Rogers, to testify and the truth to say, on the part and behalf of the claimants of the propeller "Mary J. Vaughan," in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the southern dist. of New York, at New York City, in the district aforesaid, wherein John Gordon et als. are libellants against The Propeller "Mary J. Vaughan" and Steamboat "Telegraph," &c.

And the said William Rogers, being about the age of twenty-four years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said William Rogers, and he did thereupon depose, testify, and say as follows, viz:

I was first engineer of the Vaughan, on board at the time of this collision. I was not on duty at the time. I was in bed at the time, in the forecastle. The blow waked me up as they came together. I jumped up & ran right to the engine-room. I found McLoyd there working the engine—working it back. It wasn't over half a minute from my being waked up, & my reaching the engine-room. I didn't stop to dress, nor for nothing. I first saw the Telegraph after they had got way past our stern. After we had worked our engine back for half a minute, after I reached the engine-room, we got a bell to stop. I then stepped out on to the stern, & saw the Telegraph's barge drifting past. I didn't see the boat that sunk. The collision was a little above Cold Spring,
89 pretty well on the west shore. The last I knew of Thomas Loyd he had enlisted. He came to me one Friday, about Nov. 1, 1864, & said he wanted to go away for two or three days. I told him he might go. That night I went & got a man temporarily in his place. When the 2 or 3 days were up he didn't come back. He left his clothes on board—all of them. About 2 or 3 weeks from that time he wrote to me, saying he had enlisted ; that he was in New Haven; that is the last I have heard from him. He came from Delaware. I don't know what place.

Cross-examined by Mr. Fithian:

I was undressed in the forecastle, with only my drawers on. It was probably half an hour before I went back and dressed myself. I have been an engineer 6 years. Went on the Vaughan in March, 1864. It would take 5 minutes to stop the Vaughan & get stern-way on her if

she was going 6 knots an hour with 2 canal-boats in tow. It would take a couple of minutes to stop her headway dead in the water. Never tried it. Would take longer to get her going astern.

Direct resumed:

It takes longer to back a propeller than to start her ahead. If she is dead in the water I don't know as it would. Can't back a propeller as strong as you can a side-wheel. I never knew Loyd till he came on the Vaughan in June. He continued on her as engineer from that time. He was a pretty good engineer—a very careful man—always attended right to his business.

Mr. Lyon waives cross-examination.

W'M ROGERS.

Subscribed & sworn to before me this 9th day of June, 1865.

GEO. F. BETTS,
U. S. Comm'r.

90 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this tenth day of June, in the year of our Lord one thousand eight hundred and sixty-five, I, George F. Betts, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the United States court building, 39 and 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Rufus Brayton, to testify and the truth to say, on the part and behalf of the claimants of the propeller "Mary J. Vaughan," in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the southern dist. of New York, at New York City, in the district aforesaid, wherein John Gordon et al., are libellants, ag'st The Propeller "Mary J. Vaughan" and Steamboat "Telegraph," &c.

And the said Rufus Brayton, being about the age of thirty-four years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Rufus Brayton, and he did thereupon depose, testify, and say as follows, viz:

I was captain & pilot on the Vaughan; I was on board at the time of the collision. We left Troy on the morning of October 25th, 1864, between 9 & 10 o'clock. I had two canal-boats in tow, the R. M. Adams & the Sherman Lewis; they were northern canal-boats; they were placed, the Lewis on the port side, & the Adams on the starboard side; they were fastened in the usual way, as described by the witness Carey. The Vaughan is a propeller, of about 60 tons, old measurement, and 50 tons new custom-house measurement; she is 17 feet 4 inches wide, extreme

width; 86 feet long on deck; 74 feet length of keel; usually carries 80 pounds of steam—is a high-pressure boat—sometimes more; her crew was
3 men beside myself: engineer, 2nd engineer, wheelsman or deck
91 hand; engineer was Rogers; 2nd engineer, Loyd; wheelsman or deck hand was Carey. I had no cook that trip; my wife was on board, and cooked. That crew, with a cook, was the usual crew for vessels of this class, though I sometimes carried an extra hand in running boat below Baltimore. Carey and myself took turns at the wheel. I was at the wheel the fore part of the night until 12 o'clock. Then Patrick Carey took the wheel. I then laid down on a lounge in the pilot-house. At a little after that I went to sleep; I was awake a number of times. When I finally woke it was off Polypus Island, above Butter Hill, about on a direct line between Polypus Island & Butter Hill. A whistle of our propeller in answer (GFB) to another propeller woke me up. That was a propeller bound up the river, with a barge in tow; she passed eastward of us; she was above Butter Hill; between that and Polypus Island. I got up about the time she was passing; I saw where we were. At the same time when I got up there was another propeller to westward of us, going down. The Vaughan was nearly head down the river. When I got up he was straightening her down the river, having sheered to westward to pass the propeller that signalled. We were off the point of Butter Hill then; had just rounded the point, so that we could see down the river; saw the Telegraph about the time I
waked up; saw the lights of what proved to be the Telegraph;
92 supposed her to be about off Cold Spring when I saw her first, a mile, or a mile & a quarter from us. The tide was the last of the ebb; slack-water inshore. We were bound down the river. She was coming up; she was somewhat to the westward of us. We were near the centre of the river. I heard one blast of whistle from her as a signal that she would go to the eastward of us. At first Carey spoke & said, "They want to go to the eastward of us." I said, "Very well; let them go." I answered her whistle at the same time I spoke—immediately; I answered it with one blast; it was a blast of the usual length we give in answering signals; it was a blast which could have been heard, I suppose, 2 miles—as far as West Point; couldn't state how far. We had a good whistle on the Vaughan, as large as is usual on such propellers—what we call a 4-inch whistle. The Telegraph was about half a mile off when I made the signal. After the signal I stepped to the wheel to help Carey; he had hove the wheel aport, or was heaving it, and I took hold to assist him. That changed the course of the propeller to the westward, to a course about southwest, assuming the river to be north and south, from one cardinal point to another, 4 points by the card. She was sheered far enough to pass the Telegraph to the westward, providing the Telegraph had been stationary, or sheering to the eastward. Then the Vaughan's (GFB) wheel was steadied. I had
charge of her, & was steering from that time. She was kept on
93 that course about southwest till I discovered the gap was closing between us and the Telegraph, when the Vaughan's wheel was again hove aport, & her engine slowed. She continued for perhaps half a minute with her wheel aport, & working ahead steady. Her engine was then stopped and backed; her engine was working back when the barge struck the canal-boat. The canal-boat "Sherman Lewis," on our port side, was struck. A barge in tow of steamer Telegraph, on her port side, struck her; could not see exactly where they hit on account of the hoops on the deck of canal-boat. The blow parted all the lines the Sherman Lewis was towing by; it shoved the Lewis back & across

the bows of the Telegraph & her barges. The barge, after striking the canal-boat, struck the propeller forward on our port side, about 10 feet from the bow, carrying away about 12 or 15 feet of the bulwarks of the Vaughan. There was plenty of room to the eastward of us. Our position was about half way from the centre of the river to the west shore. To have passed us to the eastward she should have hove her wheel aport; she had plenty of time and room to have done so, and passed us to the eastward. From her course she could not, I think, possibly have put her helm aport. Our propeller was heading to the westward of the course of the river (GFB) at the time of the collision. I should suppose the Telegraph to have been about head up the
94 river at the time of the collision. The place of the collision was at a point between Butter Hill & Crow's Nest, on the west side of the river, about half way between the centre of the west side. There was a bad shade from the mountains that night; we were in that shade. After the boat was carried away I stopped our engine from working back. I then went and got a light to see how bad we were damaged; went forward with the light. I found we were not damaged below our water-line. I then went in the pilot-house to turn the propeller round, with her head up the river. I hove the wheel astarboard, and started her ahead to turn her around; found she was unmanageable on account of the boat on our starboard side being adrift, or partially so; her bow, as we started ahead, swung off, and turned us in then to the westward. I immediately stopped her, & reversed our engine, which would have a tendency to turn her head to the eastward again; kept her engine working back until I got her head to eastward again. We then stopped, & secured the canal-boat on our starboard side; went around to the eastward of the Telegraph to see if I could find the boat which had been lost. When I came alongside (starboard side) of the Telegraph I was hailed by the captain of the Sherman Lewis to come and take him and his men (GFB) off from a barge in tow of the Telegraph, a barge
95 on the starboard side of the steamer Telegraph. After some little trouble I got them off. I then went to the Sherman Lewis; she was lying across the river, head to the westward; she was about 100 feet from the steamer Telegraph. I went head on to the Sherman Lewis' stern, our head to the northwest. When I got within a very few feet she disappeared—she sunk. When I first saw her nothing but her stern was above water in sight. I then took two men off from the hoops which were afloat. We waited near the spot for a short time. While waiting there the Telegraph passed to the eastward of us, going up the river. We then launched a small boat to find the hoops, which were in the shade, so that we could not see them. After finding them, we fastened them alongside the canal-boat; spent some time at it, and towed the hoops to Cold Spring; we staid at Cold Spring till after daylight; then came to New York with the propeller and the boat R. M. Adams. The night was a clear starlight night; did not notice whether there was a moon or not. There was little or no wind; what there was was (GFB) north. The channel there is, I should think, about half a mile wide at place of collision. I should think so. Our lights were good; what we usually carried. We had a red light on our pilot-house, a bright light forward on our bow, & a bright light aft on our flag-staff. A bright light
96 means a light not colored, burning bright. The light on our flag-staff was about 35 feet from our deck. These were the usual lights on tow-boats on the Hudson. The windows of pilot-house were open in front and at the sides.

Cross-ex'd by Mr. Fithian:

Had been capt'n of the Vaughan from the 1st of January, 1864, that season; was not the owner. I had an interest in her; I was to own half of her when she was paid for. (On correction.) T. P. Vaughan built the Vaughan. I had something to do with building of her; merely superintending. I was to have one-half on payment of $8,000. There was no agreement when it was to be paid. This was talk. After the boat was done there was another agreement made; that agreement was, that I was to have one-quarter for $4,500, payable $2,000 down, & in yearly payments of $1,000 each for the two first years, and the $500 the third year. I was to sail her; I was to be paid $1,000 a season for sailing her out of her net earnings. I hired the crew, and paid them out of the earnings of the boat. The agreement, in substance, was, that I was to run the boat, pay her expenses out of the earnings, including my $1,000, and account to the owners for the balance. I was not at that time a licensed pilot. Sometimes I had been accustomed to employ a pilot on board of her, not a licensed pilot; can't tell whether I had a pilot
97 on the trip before the collision without looking at my books. I employed Thomas Ward for my last pilot before the trip on which the collision occurred. We had been laid up in Troy nine weeks or so before we started on the last trip. I think Ward was with me; think he was with me on the last trip before that. I first hired Ward about the 22nd of May; he went with me about a month. I then sent him on another propeller I had an interest in, belonging to Mr. Vaughan. I hired Payne as pilot on my vessel; he lives at Lansinkurg; he came with me about July 1st; he stayed with me until some time in August, about the 15th; he then left. I laid up in Jersey City for a week or 10 days. Carey had been with me all the season. I used Carey in Payne's place after I started again; he acted as pilot until about September 1st. I then employed again Thomas Ward, and he acted as pilot for me until this last trip, on which the collision took place. I was woke up by a signal between our vessel and another that was passing on the morning of the collision. When I first looked out the propeller was abreast of us, and just passing; she passed us to the eastward. Our propeller was then just turning, or had turned from a sheer to the westward to pass that propeller. We were below Polypus Island, between Polypus Island & Butter Hill, when we passed that propeller. I should judge it was in the neighborhood of ¾ of a mile from Polypus Island to Butter
98 Hill. When we met the propeller I think we were a little nearer to Butter Hill. Polypus Island lies nearer to *each* than to west shore. Main channel of river runs to west of Polypus Island. Abreast of Polypus Island channel is 1½ to 2 miles wide. It is lower end of Newburgh Bay. I saw the lights of the Telegraph about the time of passing the propeller, or very shortly after. Those lights were down the river, and a little to the westward of us. We were heading to the eastward a little of those lights. She was then off from us a mile to a mile and a quarter, perhaps a mile and a half.

Q. What is the usual practice for boats with tows meeting each other?

A. It is for vessels going against the tide to have the preference, or go either side where she is a mind to, when she can keep out of the tide. I judge the Telegraph was about ½ mile off from us when she blew her one whistle. Channel at place of collision is way across from shore to shore. Collision occurred nearer to Crow's Nest than to Butter Hill. I should judge it was about ½ a mile from Crow's Nest to Butter Hill—may be ⅝. As to these distances I only give my judgment, and don't

pretend to be accurate in them. When we came into collision our boat was heading about S.W. by W., if you call the course of the river there north & south, and the Telegraph was heading north, or to the
99 westward of north, if anything. I should think the Telegraph was 60 to 75 fathoms off from us when our engine began to work backwards. I should suppose we were going through the water 4½ to 5 knots before we slowed. We can tow 14 loaded northern canal-boats from Troy to New York with the Vaughan. She is a good boat of her size. She would go 100 fathoms before we could stop her dead in the water, if she was going light, six knots an hour, with 40 pounds of steam; with 81 pounds of steam, in half that distance. I suppose we had about 80 pounds of steam on that night. If we were dead in the water with two canal-boats in tow, it would take ¼ to ½ minute to get stern-way on her. A full ebb tide runs about 2 miles an hour, perhaps 3 miles an hour. At time of collision, very little tide or none at all. The flood was making before I got the hoops to Cold Spring.

Re-direct:

Thomas T. Vaughan paid the bills for building the Vaughan, and had the title. It was with him I had the agreement that I was to have a share on making the payments. The first arrangement by which I was to have half was only a mere talk, nothing more. The arrangement by which I was to have ¼ was a writtin contract. I haven't made the payments yet, except the first. For six seasons before 1864, I was
100 on a sailing canal-boat, sailing up and down the river and the sound for four years. Before that, I was on a canal-boat without sails; was towed through the river. I was on different steamboats on Lake Champlain from the time I was 16 to 22, as 2nd pilot, pilot; last season as capt'n; one season as engineer. Haven't been on any steamboat since till 1864. I understood pilots on tow-boats had to be licensed in 1864; that there was a law passed requiring it. But I believe no pilots did take licenses.

Re-cross:

I don't know whether they did or not.

Cross-examination waived by Mr. Lyon.

R. BRAYTON.

Sworn to before me this 10th day of June, 1868.

GEO. F. BETTS.
U. S. Comm'r.

Rufus Brayton, recalled on the part of the claimants of the propeller Mary J. Vaughan, testifies:

An ebb tide sets off on to the east shore around Butter Hill, as far down as Stony Point.

(Exhibit B shewn to witness.)

I do not think this to be a correct map. It does not exhibit the place of the collision correctly. The true place was further to the westward, and further down, as regards Butter Hill, on this map. The hoops floated off the canal-boat's deck. We picked them up at a very little below the point of Crow's Nest, within 200 feet of the west shore, about abreast of Stony Point. The tide would have carried them
101 on to Stony Point, if they had floated off, on the east side of middle of river above Stony Point, or if they had gone clear of Stony Point, they would have been carried over to the west shore,

below Cold Spring. There was a fender on the port side of the bow of the Vaughan. It was fastened by the top to the bulwarks by ropes, so that its top was even with the top of the bulwarks. The fender was 3 to 3½ feet long, of oak or hickory, 6 to 8 inches through; it was about 8 feet, 6 to 8 back from our stern; top of bulwarks is about 20 inches above deck; deck about 2½ feet above water amidships; and where fender is, 3 feet above water—not to exceed that. The barge struck us on that fender. The barge in tow of the Telegraph, after the lines of the canal-boat parted, struck hard enough to cut that fender in two, or break it on our wearing piece.

Cross-examined by Mr. Fithian:

Q. How far ahead of the bow of your propeller was the bow of the canal-boat on the port side?

A. Somewhere from 5 to 12 feet. Fender was 6 to 8 feet back from our stem; 12 to 15 feet back of the bow of the canal-boat when towing alongside and between my boat & the canal-boat. It always hung there. Canal-boat, as she lay alongside was not within 6 feet of the fender—4 to 6 feet.

102 Q. Will you please explain how the Minisink could get between you and the canal-boat, so as to strike that fender?

A. She did not get between; when the barge struck that fender, the canal-boat had left, and was back of that fender. The barge and canal-boat came together before there was any touching of my fender.

A. Did you, soon after this collision, state to Captain Scutt that you tried to back your propeller, and that your engine caught on the centre, and you couldn't back her.

A. I did not, to Capt. Scutt, or to any other man.

Q. Did you state so, or in substance, to Mr. William Brevoort?

A. I did not; but I said to him that the time seemed to be so long between her stopping & backing, that I thought she had catched on the centre; but she had not. The time between her stopping & backing might have been two seconds, but it seemed to me half an hour, because I knew they were going to hit, and was anxious.

Re-direct:

There was perhaps a second or two seconds between her stopping and backing; just as quick as a man can do it.

Cross-examination waived by Mr. Lyon.

R. BRAYTON.

Subscribed & sworn before me this 20th day of June, 1865.

GEO. F. BETTS,
U. S. Comm'r.

103 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, George F. Betts, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the

United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witnesses are material and necessary in the cause in the caption of the said deposition named, and that the depositions are taken by consent of the proctors for the respective parties.

I further certify that due notification of the time and place of taking the said deposition, signed by me, was made out and served on the proctors for the libellants and for the steamboat Telegraph, to be present at the taking of the said depositions and to put interrogatories, if he or they might think fit.

I further certify that, on the 9th & 10th day of June, in the year of our Lord one thousand eight hundred and sixty-five, I was attended by the proctors for the respective parties and by the witness who were of sound mind and lawful age; and the witnesses were by me first carefully examined, and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions were by me reduced to writing in the presence of the witness and from their statements; and after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of filing the court for which the same were taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand and seal this tenth day of June, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the eighty-ninth.

[L. S.]. GEO. F. BETTS,
United States Commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

104 Filed the 12th day of June, 1865.

105 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered, that on this fourteenth day of June, in the year of our Lord one thousand eight hundred and sixty- , I, George F. Betts, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act, in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the United States court building, 39 and 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Ralph A. Smith, to testify and the truth to say, on the part and behalf of the claimant of the steamboat "Telegraph" in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the southern dist. of New York, at New York City, in the

district aforesaid, wherein John Gordon et al. are libellants against The Propeller "Mary T. Vaughan" and The Steamboat "Telegraph."

And the said Ralph A. Smith, being about the age of 47 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Ralph A. Smith, and he did thereupon depose, testify, and say as follows, viz:

I am a boatman; have been about 37 years; have boated about the waters around New York City 25 years to Piermont & Newburgh. I was mate of barge Minisink last season. I remember the collision between her and a canal-boat in tow of the propeller "Mary J. Vaughan." That was about half way between Butter Hill & Cold Spring, on the Hudson River. My barge was in tow of the steamboat Telegraph. We were on her port side; no other vessel on her port side but us. The barge Dutchess was on the starboard side. I don't think there was any thing else in tow; I don't recollect. We were bound up the river. As near as I can recollect it occurred between 1 & 2 o'clock at night. It might vary from that. I had no time-piece to look at. I was on
106 deck at time of collision—forward. We had a watchman on deck at the time. His name was Michael Stanton. He was near me. We both came out together on to the forward deck. I was down stairs in the cabin when I heard the Telegraph's whistle blow. I came up stairs then, and as I came on deck I heard the Telegraph's second whistle. It is about 20 feet from the gangway to our forward bulkhead door. I went to that forward door. As I stepped out of that door on to the deck I heard this 2nd whistle. When I got out on forward deck I saw a boat coming for us. The Telegraph was then heading to the northeast. That boat was, I judge, 700 to 800 feet off. She was then heading to the southeast. She was coming pretty good speed. I next heard the Telegraph's bell ring to slow; then to stop; then two bells to back. They rung just as you would ring bells to stop and back an engine. I should think the bells were answered by the engineer. The next thing was that the canal-boat in tow of the Vaughan hit my barge, the Minisink. I was standing within 3 or 4 feet of our forward rail at the time of collision. Stanton stood pretty close by me. It was a pretty hard blow. It broke in four of my plank 3 or 4 feet from my stem, on the port bow. On the flush of our bow, quartering, the stem of the canal-boat hit us. Then every line that held her to the
107 propeller parted, and the propeller went on and left her sticking there. There didn't appear to be any stoppage in the propeller. I don't think there was any, the way she was going past us. I got on our rail to get over onto the canal-boat's bow, and told Stanton to bring a light. He brought one. I looked down & saw a hole stove into us, about 20 inches up & down, and 2½ feet lengthwise; two planks cut clear through, the other two planks stove in. I didn't see what was the damage to the canal-boat. The boats were together when I called for a light. When I got down and looked at the injury to my boat the canal-boat was then about two feet off, and the Telegraph a backing. I think the canal-boat had a projecting stem. I did not see where the blow came on the canal-boat.

Q. You have said that the stem of the canal-boat knocked a hole in your boat. Have you any other knowledge as to that except the appearance of the hole on your boat?

A. No. I saw no more of the Vaughan that night. As we backed out clear of the canal-boat, her stern swung out clear to the eastward.

I then saw a man come out of the cabin of the canal-boat and come up stairs. She then swung to the eastward of us, and I think passed on to the Duchess side. I could see she was settling in the water.
108 After we got clear from the canal-boat the Telegraph went on to Newburg, up the river. I think we passed to the west of the canal-boat; tide was ebb, & I think about half ebb. Full ebb tide runs there 7 to 8 knots an hour.

Q. Reconsider on that, whether you haven't got that too fast.

A. I never measured it; but it runs stronger there than where the river is wider. The rest of my crew were abed when this collision occurred. Our barge is 6 feet from her main deck to the water. She has two decks, and state-rooms on her upper deck. The hurricane deck is 25 to 28 feet above the water. She is 230 feet long. I knew last season, but I forget. I believe she is longer than the Telegraph. I don't remember her width, though I measured it myself. We had three lights—one against the bulkhead, aft; one around by the ladies saloon, aft; and one forward, by the pump. That forward one hangs nigh amidships of the deck. These lights were inside of her forward bulkhead. When the canal-boat struck us—I didn't see anybody in the pilot-house of the propeller; there might have been. I asked those on the propeller what their calculation was. I got no answer. I did not hear any whistle from the propeller at any time. I didn't hear them answer us at all. We were
109 about the middle of the river at time of collision. I have been on steamboats on the Hudson about half my time. I understand the steam signals & navigation of this river. When the Telegraph blowed her one whistle that was to tell the other boat to keep her course down and to answer. It indicated that the Telegraph was going to the right. That indicated that it was the duty of the other boat to go to the right too.

Q. Did the Vaughan go to the right?

A. She was heading to the southeast; how could she? If the Vaughan had put her helm hard aport when I first came on deck after hearing the Telegraph's one whistle there would not have been any collision.

Cross:

I live in Milton, Ulster Co. I was in employ of B. Carpenter & Co. in 1864; business of barge was carrying freight from Newburg to New York; cabin from which I came out was forward under deck. Stanton didn't come out of a cabin, but was on deck when I came out; cabin was under our main deck. It was in the hold of the barge; cabin opens forward on port side, 8 steps up; that is where I generally slept. I had been asleep before that. I woke up—got up—put on my boots & hat & went up. What woke me up was, I thought we were pretty nigh Newburgh, as we had been going, and I had my nap out. We left New
110 York at 5 o'clock. Our usual time of getting to Newburgh is 12 to 1 to 2 o'clock, according to tide and wind. We have got there at 11 o'clock with 200 to 250 tons of freight—light for us; lines of our barge were none of them parted by the collision. I heard one whistle from the Telegraph, just as I got to foot of stairs. I knew it was the Telegraph from being so near; next whistle I heard after I got on deck—just after I got on deck. She blowed that just as you would for danger. I was not in pilot-house of Telegraph. I saw a man there. When I heard the bells ring, I looked; I didn't see any body else on the Telegraph; still there might have been. I went right straight forward on main deck when I left the cabin. I looked right forward and saw a boat

coming. I kept my eye on her till just before we struck. I told Stanton to stand back or he would be knocked to the devil. We were half way between Polypus Island & Cold Spring when I came out. No one told me we were heading northeast; my eyes told me. I looked to see if we were heading northeast when I came out. We had no compass on board. I didn't see any compass. I don't know what the course of the river is by the compass in that reach. A course northeast would fetch us behind Polypus Island; I mean to the eastward of Polypus Island.

I think we were on a course that, if continued, would have brought
111 us to the eastward of Polypus Island; couldn't say how far, but I think a close shave to the eastward of it. It wouldn't have made any difference what course the Telegraph pursued, the Vaughan would have cleared us if she had put her helm hard aport. The Vaughan was a little to the westward of us when I first saw her. The Telegraph was then a little to the eastward of the Vaughan when I first saw her.

Q. Was the Telegraph going up in the middle of the river; on which side of it?

A. The Telegraph was keeping up to the easterly side of the river. [My answer, as I understood it, was that the Telegraph was in the middle of the river, bearing to the northeast.] Nothing happened to the stern of my barge. My stern projects out about six inches. There was no injury on my barge except what I have described on the flush of my port bow. The Vaughan raked along our side after the lines of the canal-boat parted. I couldn't say whether we broke anything on the Vaughan; I couldn't say whether the bow of our barge came in contact with the fender on the Vaughan or not, because I was looking at the canal-boat & us. I looked at this break on our barge before the canal-boat and we separated. Still the Telegraph was backing at the same time, and what I had to do I had to do quickly. The Vaughan was passing along to our stern at the same time. I couldn't say
112 whether the canal-boat touched the Dutchess, nor whether the men got from her on to the Dutchess; but I saw the canal-boat swing across the bow of our barge, the Telegraph, and the Dutchess; I think the tide swung her over then, while the Telegraph was backing down the river. I think it might have been 4 to 5 minutes after second whistle before boats came together; perhaps not so long. I was not at all excited, for I had been in collisions before. I thought the blow might be lower than it was so as to cause *to me* sink.

Re-direct:

In my direct testimony I did not mean to say that Stanton and I came out on deck together from the cabin, but that we came together on to the forward deck from the main deck.

Mr. Lyon waives cross-examination.

Re-cross:

Was starlight; but I don't think there was any moon.

RALPH A. SMITH.

Sworn to before me this 16th day of June, 1865.

GEO. F. BETTS,
U. S. Comm'r.

113 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this fifteenth day of June, in the year of our Lord one thousand eight hundred and sixty-five, I George F. Betts, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the United States court building, 39 and 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Cleophas Hopton, to testify and the truth to say, on the part and behalf of the claimant of the steamboat Telegraph, in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the southern dist. of New York, at New York City, in the district aforesaid, wherein John Gordon et als. are libellants against The Propeller "Mary J. Vaughn" and The Steamboat "Telegraph," &c.

And the said Cleophas Hopton, being about the age of twenty-two years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Cleophas Hopton, and he did thereupon depose, testify, and say as follows, viz:

In October and November, 1864, I was engineer of the steamboat Telegraph. I remember the collision in question. I was on duty at that time. We were going up the river. The first I knew about it the pilot came to me and said he thought the propeller would run into us, and to stop the engine. Zach. Scutt was the pilot. I was then standing right alongside the engine-room outside, on deck. The engine room is on the main deck, amidships, forward of the wheel—a door each side. I was standing on starboard side. Nearest way to get to pilot-house is to go forward & up stairs. There are no stairs directly up to pilot-house from engine-room, but 12 to 15 feet off. I think Zach. came from forward. Where I stood I could see river out ahead, but I didn't
114 see the propeller, and don't know where she was when he told me to stop the engine. I stopped the engine & commenced to back. I reversed the engine & worked it back. I felt the blow when these boats came together. I should judge the engine had made 6 to 10 turns back before they struck—may be a dozen; couldn't tell exactly. The engine was working back when the blow came. I am sure of that. Next, I got a bell to stop working her back. That's all I recollect that minute. I let her stand still till I got more orders; can't tell how long —may be ten minutes. It is so long ago I have nearly forgotten all about it. I recollect what I have already told. I was assistant engineer; had been employed early in the season, April 16th, as fireman; then they put me to work on the engine, handling it every day; then, about 3 weeks before the collision, I was put in as assistant engineer. I think I understand well the engineer's bells, and how to handle the

engine according to the bells. I took my place at the engine at 12 o'clock that night. At time of collision, & before & after it, I answered correctly every bell I got from the pilot-house.

Cross, by Mr. Van Santvoord:

I don't now recollect what bells I got after the bell to stop backing.

Re-direct:

I answered correctly the bells that I got after the bell to stop backing.

Mr. Lyon waives cross-examination.

CLEOPHAS HOPTON.

Sworn to before me this 15th day of June, 1865.

GEO. F. BETTS,
U. S. Comm'r.

115 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this fifteenth day of June, in the year of our Lord one thousand eight hundred and sixty- , I, George F. Betts, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the United States court building, 39 and 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Levi Deyo, to testify and the truth to say, on the part and behalf of the claimant of the steamboat Telegraph in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the southern dist. of New York, at New York City, in the district aforesaid, wherein John Gordon et als. are libellants against The Propeller "Mary J. Vaughan" and The Steamboat "Telegraph," &c.

And the said Levi Deyo being about the age of thirty-three years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said , and he did thereupon depose, testify, and say as follows, viz:

I was mate on the barge Dutchess at time of this collision. We were in tow of the Telegraph, on her starboard side. I was on watch on the barge at the time. I came on watch at 12 o'clock, to the best of my knowledge. Collision was between 2 & 3 o'clock. We were a little above Cold Spring, about middle of river. Part of our crew were asleep at the time in the forward cabin. I stood on the forward deck. The first thing I noticed was a distinct whistle, blowed by the Telegraph. I had seen the propeller before I heard the whistle. Propeller was about in middle of river when I first saw her; half a mile from us. That was before any whistle was blowed at all. I think she was then

heading about southeast. I had no compass to look at. The
116 Telegraph was then steering, I think, very near a northeast course; I can't be positive. When the Telegraph blowed her whistle the boats were, I think, 300 to 400 yards apart; may be further; couldn't tell at night. The propeller didn't answer our whistle. The boats were then approaching one another very close, and the bell rang on the Telegraph to slow; then again to back. Then I heard two bells rung for the boat to back, and about that time the boats came together, as near as I can tell. I saw the barge Minisink and canal-boat when they struck. The Minisink was struck aft her stem, about on the bend of her bow, on the port side. It was probably two minutes between the bells I heard to go back and the blow, as near as I could get at it. These bells were the bells of the Telegraph. As these boats were approaching the Telegraph changed her course a little more to the eastward. I was not in pilot-house, and didn't see whether the helm of the Telegraph was ported or not. The Telegraph changed her course to the eastward before the first bell rang to slow. I think she was sheering to the eastward all the while. After the collision the propeller went right on past the Minisink. I don't think she stopped at all until she got below the Minisink; canal-boat then swung around across the bow of us. She was then broken loose from the propeller. Pro-
117 peller didn't change her course, except that I thought she was crowding all the time on the course of the Telegraph. Next I saw of the propeller was that she came up on the starboard side of the Dutchess and took off two men that belonged to the canal-boat. Those two men came off the canal-boat as soon as she swung around under our bows. The propeller came up to the canal-boat. After the propeller had taken the men off from us, the Telegraph then backed off the canal-boat. After the canal-boat swung around she separated from the Minisink, before the men got off her on to the Dutchess. Her port stem lapped on to our starboard bow about 10 feet. The Telegraph was then not working back, but we were all drifting down with the tide. I don't think the Telegraph had any headway when the boats came together; if anything, I think she had stern-way. I don't know the speed of the propeller when she struck and went past. She seemed to be going fast. It was all of ten minutes after the collision, may be longer, before the propeller got up on our starboard side. After the propeller took the men off our barge the Telegraph backed clear of the canal-boat and went on up the river. I think we went westward of the canal-boat as we went up. I have been 20 years a navigator on the Hudson;
118 have been a little on steamboats; slooping 14 years steady. I think I know the rules of navigation on the river. I don't see anything more that the Telegraph could have done to avoid the collision than she did. She did all she could, to the best of my knowledge and judgment. The Telegraph had in tow the barges Minisink, Dutchess, and Insurance. The Insurance tailed on to the Dutchess. Capt. Green commanded her. Tide was ebb at this time, past the half-run; wind was down the river, light, north-a-northeast; dark, but clear; no moon; stars shone bright; had no difficulty in seeing the propeller ½ to ¾ mile off.

Cross-ex'd by Mr. Van Santvoord:

Live in New York City; did last season; barge Dutchess carried produce between New York & Po'keepsie. She is about 150 feet long, 30 feet wide; tonnage is measurement 280 odd. We had 80 or 90 tons on. I was on the main deck when I first saw the propeller, forward of

forward bulkhead, near our stem; promenade deck was over my head; that is carried out flush with main deck forward. I had been on that forward deck 20 minutes, standing there; had been walking around on main deck aft, before, seeing that everything was right. I was forward before I heard the whistle on the Telegraph. Our bow was as far forward as the Telegraph's—about on a line. I think the Minisink's
119 bow lay a few feet back from the line of the bow of the Telegraph. I could see the port rail of the Minisink, but not under her guard. The port rail was not struck. The blow was under her guard. I couldn't see the place that was struck; didn't see what was broken. The stem of the canal-boat was not as high as the guard of the Minisink; didn't see afterwards the place that was broken on the Minisink. Pilot-house on Telegraph was on her promenade deck, 25 or 30 feet from her bow, 7 or 8 feet above her main deck. Floor of pilot-house was not as high as our hurricane deck; not as high as our promenade deck. Pilot-house of Telegraph was aft of where I stood. I didn't notice it except that I had seen a man in it at the wheel; didn't notice whether its windows were up or not. From the time I saw the Vaughan my attention was fixed on her till the boats came together. I don't know what the pilot of the Telegraph did with the wheel, except by inference.

Q. In regard to the course of the Telegraph, after you saw the Vaughn coming down, did you yourself observe anything more than this, that the course of the Telegraph seemed to you to bear more to the eastward of the place of the Vaughan, or the two vessels were approaching each other before the collision; or how otherwise?

It appeared to me that she was bearing to the eastward of
120 the place of the Vaughan. That is just what I observed.

Re-direct:

It appeared to me as if there was no one in the pilot-house of the Vaughan, from the way she went on after the collision; not stopping at all.

Re-cross:

Immediately after the collision the Telegraph and the Minisink were both between me and the Vaughan. I saw her across the Telegraph, and between the promenade and main decks of the Minisink.

Cross-examination waived by Mr. Lyon.

LEVI DEYO.

Sworn to before me this 15th day of June, 1865.

GEORGE F. BETTS.
U. S. Comm'r.

121 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this fifteenth day of June, in the year of our Lord one thousand eight hundred and sixty-five, I, George F. Betts, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for

the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the United States court building, 39 and 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Zachariah Scutt, to testify and the truth to say, on the part and behalf of the claimant of the steamboat Telegraph, in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the southern district of New York, at New York City, in the district aforesaid, wherein John Gordon et als. are libellants against The Propeller "Mary J. Vaughan" & Steamboat "Telegraph," &c.

And the said Zachariah Scutt, being about the age of forty-three years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Zachariah Scutt, and he did thereupon depose, testify, and say as follows, viz:

I was pilot on the Telegraph at the time of this collision. I have acted as pilot on steamboats on the Hudson River 12 to 13 years. I was up at the time of the collision, I was on forward deck of the Telegraph just before collision, and at time of it. Capt. Charles Scutt was at the wheel at time of collision. I was on the forward deck when I first discovered the Vaughan approaching. This was after the whistle blowed. The whistle first attracted my attention to anything coming. My watch was not off yet. I went below to get a cup of tea. I had been on watch; went on from New York dock. It was my watch up to Newburgh from New York. About ½ hour before collision, Capt.
122 Charles Scutt came on deck, and I told him I thought I would go below and get a cup of tea. He took the wheel and I went below. I was in the cabin when I heard the whistle; can't remember whether I had finished my tea, but I finished it before I came out. It was the Telegraph's whistle that I heard—one distinct whistle. After I got my tea, I came out on deck to take the wheel again and finish my watch. It was perhaps 5 or 6, or 8 minutes after I heard the whistle before I came out on deck; I came right out on forward main deck. I stopped there till after the collision. I was where I could speak to the man in our pilot-house. When I got to the deck I saw the propeller coming, ¼ mile off, I should think. We were then about the middle of the river, above Cold Spring, or opposite Cold Spring; we were heading on the starboard hand up the river, rather northeast. The first thing was that on our boat a bell rung to slow, then a bell to stop her, then shortly after two bells to back her. During this time the Telegraph changed her course, kept hauling gradually more to the eastward & to the starboard hand. I saw the capt. heaving his wheel aport; I didn't speak to him; saw him heave his wheel aport before he rang the bells. The Telegraph answered the helm; could see by the make of the land, which wasn't far off. When I first saw the Vaughan she was coming about right down the river, and was to the westward of us, and
123 near Butter Hill, near some other tow that was bound up heading to the eastward, more across the river. She then straightened down the river about south. She did'nt keep on the eastward course more than 2 or 3 minutes. This was before I went down stairs into the cabin. She was then a mile off; I didn't look to

see whether she had straightened down the river before I went down to the cabin; but she must have to have kept in the channel. When I came up from tea and saw the propeller, she was heading right straight for us. If we had then stopped and lain still, and she had kept on that course, she would probably have gone to the eastward of us. I heard no answering whistle from the Vaughan to our whistle. The Vaughan then kept hauling gradually to the westward a little after she got near us, within 400 to 500 yards off—not so far off as that—at about 200 yards off; that hauled her on our port bow and brought her just to our port barge. At this time our engine was working back, and we could see our quick water under our guards. I think our vessel had a little stern-way on her; at all events she was not going ahead. The propeller came on at what seemed to be a right good speed. Her canal-boat struck our port barge within about two feet of the port side of her stem,
124 dented the plank in so that we had to put in new pieces. The propeller then went on below ¼ mile and then turned around and came back. She left the canal-boat under our bows, tore herself loose, and went on. If the Telegraph had kept on the course she was heading at the time of the collision, she would have run to the east flat, under the tow on the east shore. I didn't see any person on the propeller. I could see her pilot-house, I had my eyes on the propeller all the time after I came out from tea. When the Telegraph blew her whistle, it was the duty of the Vaughan to have blown a whistle or to have stopped. There was nothing that I observed in the management of the Telegraph that was wrong or improper. She was managed in the same way that I should have managed her if I had been at the wheel.

Q. What did the Vaughan do that was improper, if anything?

A. If one boat lies stopped in the water and the other runs into her, there it is. If the Vaughan had put her helm hard aport at the time the whistle of the Telegraph blowed, or at the time the wheel of the Telegraph was put aport, she would have gone clear of us. A propeller will sheer as quick again as a side-wheel steamer or turn around. This was a clear starlight night—as clear a night as I ever saw
125 for a starlight night—no moon. There was not a breath of wind. I believe a little air from northward; water smooth as glass. There was nothing that I saw in the way to prevent the propeller blowing her whistle and porting her helm; there was no craft in the way. We had the whole river to ourselves. Tide was ebb, against us 3 or 4 miles an hour.

Cross-examined by Mr. Van Santvoord:

I live in Greene Co., Athens; am brother of Cha's Scutt who was at the wheel; I don't know whether he was charterer of Telegraph. Mr. Potts employed me, not my brother. My brother has piloted and has been captain. He has never hired out as pilot; he has no license as pilot that I know of. I had a license in 1864 as pilot; got it 7 years ago. I had been on the propeller A. S. Paige as pilot; N. Y. to Albany. I had been on the Telegraph all the season of 1864, part of season before. We left here about 5 o'clock to 5½, about 8 hours before collision. Collision was, I think, somewhere near 1 o'clock; might have been 2 o'clock; it wasn't 4 o'clock; think between 12 & 2; there was no moon. I saw the propeller before I went down to tea. Think we were a little below Cold Spring, or somewhere along there at that time. Propeller was then opposite Butter Hill, below Polypus Island, somewhere near another tug bound up; we were a mile and upwards apart—some-
126 where along there. I left Cha's Scutt at the wheel when I went

down to tea. I went down to forward cabin to tea, in the hold. I correct this—I think it was the after cabin. She has no forward cabin; I was thinking of another boat. After I heard the whistle and finished my tea, I came up & went on to the forward deck, I went to Hopton who happened to step below for something, and I told him he had better get to his engine-room, for there was a tug coming, and they might need him. This was as I was going forward. The engine-room is not two steps from forward deck. I can't recollect whether I was coming from aft or not, but I was forward when I told him that. I think I had been five or six minutes out when I told him that. I couldn't say for certain that it was one minute after I came out. Hopton was fireman at same time that he was engineer, and of course went down sometimes to tend to his fires. I heard him shovelling coal, and that was why I went and called him; that was what led me to the engine-room, was hearing him shovel coals. When I called him, he came out and went to engine-room. We were a little below Crow's Nest when I came out after my tea. The collision took place at Crow's Nest. I know the Wanagul, the ravine between Butter Hill and Crow's Nest. I know

Little Stony Point, on east side of river, ½ mile from Butter Hill,
127 I guess; that or less. The collision was between Stony Point and
Butter Hill. Stony Point is the furthest down the river; about ½ mile further down; about half way between Cold Spring & Butter Hill. After I came out I saw Capt. Cha's Scutt heaving our wheel over to port; saw the motion and saw our boat sheer. I don't think the bell had then been rung to slow; am certain it was before any bell was rung; very close before he rung his bell. I couldn't say whether he had stopped shoving his wheel to port before he rung the bell or not. I didn't hear anything of any second whistle on the Telegraph. The front windows of pilot-house were open ever since we left New York; side windows shut; am certain of this. What the Vaughan should have done was to answer our whistle and put her helm aport. Putting the wheel of the Telegraph aport when she was backing would have turned her head to the westward if she had good stern-way on her; if not, it would not have had any effect on her. I know where Polypus Island is, above Cold Spring; our course is to steer a little to the eastward of Polypus Island, according to tide. If ebb tide is slacking, we usually go on the west side of the river along up to Butter Hill, if the track is clear, to take the eddy that makes up the west shore.

I don't hardly recollect whether the tide was slacking or not
128 when we passed Cold Spring, it is so long ago. I know it was
running down good, from our drifting down after the collision. If it had been the last of the ebb, some would have steered into the west shore and some wouldn't. When I went down to tea I was keeping a little to the best of the westward of the middle of the river. I had just straightened her up, after rounding a point opposite Cold Spring. I guess it is about a mile from Cold Spring to Butter Hill.

Re-direct:

I was somewhere near opposite Cold Spring, just around that point, when I handed the wheel to Capt. Cha's Scutt to go to tea; that point was on the west shore. In steering to get around that point, I had to head towards the east land above. When I straightened up, the Telegraph was to the westward of the middle of the river, but headed up the river in a north direction. She was on a course directly up the river when I went below and was west of the centre of the river. She was two-thirds across the river to the westward. The river was very

wide there. When I came up from below, she was more to the eastward; her course up the channel would take her more to the eastward and nearer to the middle of the river, and the propeller was then in a line straight for us, and in about the same position as we was in reference to the centre of the river.

Re-cross:

129 Ebb-tide from Butter Hill, sets over into the east shore; would carry a floating object over to the eastward to Little Stony Point below, opposite to Butter Hill, and thence to the westward.

Re-direct:

I have piloted in other boats than above-named.

Cross-examination waived by Mr. Lyon.

ZACH. SCUTT.

Sworn to before me this 15th day of June, 1865.

GEO. F. BETTS,
U. S. Comm'r.

130 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, George F. Betts, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witnesses are material and necessary in the cause in the caption of the said deposition named, and that these depositions are taken by consent of the proctors of the respective parties.

I further certify that due notification of the time and place of taking the said deposition signed by me, was made out and served on the proctors for the libellants and for The Propeller Mary J. Vaughan, to be present at the taking of the said depositions and to put interrogatories, if he or they might think fit.

I further certify that, on the 14th & 15th days of June, in the year of our Lord one thousand eight hundred and sixty-five, I was attended by the proctors for the respective parties, and by the witnesses, who were of sound mind and lawful age, and the witnesses were by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions were by me reduced to writing in the presence of the witness and from their statements; and after carefully reading the same to the witnesses they subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of filing the court for which the same were taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand and seal this 15th day of June, in the year of our Lord one thousand eight hundred and

sixty-five, and of the independence of the United States the eighty-ninth.

GEO. F. BETTS,
United States Commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

131 (Indorsed:) Vol.—, page—. United States dist. court for the southern district of New York. John Gordon & al. v. The Propeller Mary J. Vaughan & St'boat Telegraph. Deposition on the part of the st'b't taken before ——— ———, United States commissioner, on the ——— day of ———, 18—. Filed the 16th day of June, 1865.

132 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this twentieth day of June, in the year of our Lord one thousand eight hundred and sixty-five, I, George F. Betts, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and caused to be and personally appear before me, at my office, at the United States court building, 39 and 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Michael Stanton, to testify and the truth to say, on the part and behalf of the claimants of the steamboat Telegraph, in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the southern dist. of New York, at New York City, in the district aforesaid, wherein John Gordon et als. are libellants against The Propeller "Mary J. Vaughan," and The Steamboat "Telegraph."

And the said Michael Stanton, being about the age of thirty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Michael Stanton, and he did thereupon depose, testify, and say as follows, viz:

I was a hand on board the barge Minisink last fall—a deck hand. I was on the Minisink at the time of this collision. When the Telegraph blowed her whistle I was down stairs in the forward cabin of the Minisink. I heard the Telegraph's whistle—one whistle, to the best of my opinion. I came right upon the forward deck and walked out on the forward deck. I took an up-&-down fender in my hand; it laid against the forward bulkhead. I was going to put it in between the barge & the canal-boat to fend it off, when I thought it wouldn't be safe for me to stand there, so I dropped the fender on the deck and stepped right inside. At first, when I was on the forward deck, there was no one with me. As I came inside the door, I met Ralph

133 Smith coming up the steps from the forward cabin. I told him I thought we would be all sunk. He said I must not say anything to scare the passengers. I told him I would not. I then went down into forward cabin and brought up my trunk and set it on a barrel on the deck inside the gangway. The boats struck before I got my trunk up. When I took up the fender, the propeller was heading right for us. She was coming down with the ebb tide. We were going up. It appeared to me the propeller was coming along a pretty good lick; because we were going slow with two heavy barges in tow, the Dutchess on the starboard side and the Minisink on the port side of the Telegraph. It appeared to me that we were heading a little east. I saw both boats when they struck. The canal-boat parted all her lines, and swung across the bows of the Minisink, Telegraph, & Dutchess. The propeller went on way past our stern. I did'nt see her after that. The propeller did'nt stop that I saw. She appeared to go by pretty fast.

Cross-examined by Mr. Van Santvoord:

Before I came on deck, I was fixing the coal fire in the stove in the cabin. The canal-boat laid right against all our stems as she swung around. One of the men of the canal-boat stepped on to the Dutchess' bow. The Minisink parted her two lines that were out aft, and
134 two strands of her bow line, holding by one strand of that bow line. We were not separated from the Telegraph. The stern of the Minisink swung out. I am quite sure I was on deck before Capt. Smith. The first thing I did when I came out was to take hold of the fender. The first thing that I thought of when I came out was that the boats were coming together. At the time I first came out, the boats were about two lengths from one another, as near as I can say—two lengths of our barge. I stood on the port side of the barge. I didn't see no one forward on the Telegraph. I did'nt look to see.

Mr. Lyon waives cross-examination.

MICHAEL STANTON.

Sworn to before me this 20th day of June, A. D. 1865.

GEO. F. BETTS,
U. S. Comm'r.

135 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this twentieth day of June, in the year of our Lord one thousand eight hundred and sixty-five, I, George F. Betts, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the United States court building, 39 and 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Wil-

liam O. Hopkins, to testify and the truth to say, on the part and behalf of the claimants of the steamboat Telegraph, in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the southern dist. of New York, at New York City, in the district aforesaid, wherein John Gordon et als. are libellants against The Propeller "Mary J. Vaughan" and The Steamboat "Telegraph."

And the said William O. Hopkins, being about the age of twenty-seven years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said William O. Hopkins, and he did thereupon depose, testify, and say as follows, viz:

I go on a propeller and have charge of her. Have been engaged in having charge of propellers and side-wheel boats, as master, three years. Am acquainted with the navigation of the Hudson, and of the waters around New York. I was master of the propeller George W. Batt, in October and November, 1864. She was a tow-boat around the harbor and up the river when she got a good tow. I remember taking a tow up the river October 25th, 1864; took one barge up. She was a barge that carried ice—a covered barge. We passed the Telegraph somewhere below Fort Montgomery. I didn't see her when we passed, but saw what I took to be her, astern at Fort Montgomery. I was 'turned in when we passed her. I was just below St. Anthony's
136 Nose when I turned out. I could then see a steamboat and barge about ½ mile astern, which I took to be the Telegraph. Above that and right off Butter Hill we met a propeller coming down the river. I learned afterwards it was a propeller by the name of Vaughan. I was at the wheel and wide awake when I first saw her. I was going up in the centre of the river, and she was about ⅓ of the distance between me and the east shore to the eastward of me. She was so far to the eastward of me that I supposed she would go to the eastward of me, though her place was towards the west shore, as is understood among steamboat men. I gave two blasts of the steam-whistle to let them know that I would take the west side of them. We had got a good rousin' whistle. I did'nt hear any answer to my whistle from the other propeller. I saw that other propeller commence to sheer for the westward, and to sheer pretty sharp too. She had to. She was pretty close to us. When I first saw her commence sheering to the westward, I slowed my boat down, and seeing that he was determined to go to the westward of me, I hove my wheel hard aport, and headed right over for the east shore, and I passed her to the southward because we were both off our course. I was headed to the east and she to the west. If I had continued on my course without porting my helm or slowing my engine, there would have been a collision. When
137 I blowed my signal twice to signify that I was going to the westward it was the duty of the other propeller to have answered it with two whistles, and then to have kept on the course he was on, when he would have passed me to the eastward.

Even if he had not heard my whistles, he was so far to the eastward that he ought to have kept straight, and not to have sheered to the westward. If he was in doubt what I was going to do, and had not heard my whistle, he should have notified me with his whistles.

I understand the rule & practice on the Hudson that the ascending boat has the right to whistle first.

The Telegraph got rid of some other barges, and overtook us between Esopus light & Rondout. I noticed one canal-boat in tow of that other propeller between her and me as she passed. I could't see what she had on her other side.

Cross-ex'd by Mr. Van Santvoord:

I didn't know what propeller that was at the time. I was just below Butter Hill, abreast of the Crow's Nest, when she passed us. The hollow between Butter Hill, and the mountain next below it, is what I understand Crow's Nest to be.

This propeller that I met was off to the eastward of me before I met her. I very seldom notice a steamer at night, after we have
138 passed. I don't know what course this propeller took after she passed us; I was to the eastward of the middle of the river a little, when she passed us. At the time I blew my whistle I was in the middle of the river. She was on a course to the westward when she passed us. I learned from Capt. Cha's Scutt that the propeller we met was the Vaughan; that was within the past two weeks. Except from that information I don't know it was the Vaughan I met, nor that there had been any collision. I have no recollection of meeting any other propeller that night, between that and daylight; if I had, I should have remembered it.

(Mr. Van Santvoord objects to the whole evidence of this witness *a* irrelevant, and that the statement of Capt. Scutt is not competent evidence.)

Mr. Lyon waives cross-examination.

W. O. HOPKINS.

Sworn to before me this 20th day of June, A. D. 1865.

GEO. F. BETTS,
U. S. Comm'r.

139 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this twentieth day of June, in the year of our Lord one thousand eight hundred and sixty-five, I, George F. Betts, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the United States court building, 39 and 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Charles Scutt, to testify and the truth to say, on the part and behalf of the claimants of the steamboat Telegraph, in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the southern dist. of New York, at New York City, in the district aforesaid, wherein John Gordon et als. are libellants against The Propellor "Mary J. Vaughan," and Steamboat "Telegraph."

And the said Charles Scutt, being about the age of forty-nine years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Charles Scutt, and he did thereupon depose, testify, and say as follows, viz:

I was captain of the steamboat Telegraph, last season of 1864, except a month; was at time of collision. I have been on the water, off and on, 20 years; commanded steamboats and barges, and been on sloops; deck hand on steamboats. Have commanded steamboats for 7 or 8 years. I think the Telegraph is about 147 feet long, 22 feet beam; can't tell how much over all. Her pilot-house was about 10 feet in its floor, above the main deck. I was at the wheel at the time of this collision; I had the Minisink in tow, on the port side, the Dutchess on the starboard side, the Insurance tailed on to the stern of the Dutchess. I think the barges were nearly all of a size. The Minisink is 145 feet long,
140 28 feet wide; height from water to hurricane deck, 22 feet, when partially loaded. I think her guards 5 to 6 feet above the water; their height out of water depends on loading of vessel. The evening before this collision, on October 25th, we left New York between 5 and 6 o'clock, p. m.; the Minisink was bound to Newburg; the Dutchess to Poughkeepsie; Insurance to Barrytown. The barges were, when we left New York, in the same order as at time of collision. We put the Insurance behind the Dutchess because the wind was strong down the river that night. The collision occurred in the Highlands, a little above Little Stony Point—the collision with the canal-boat in tow of the Vaughan—between two and three o'clock, a. m. There was a little light air down the river, from the northeast; when I turned in, down in the bay, there was a good breeze blowing down the river; when I came on watch, above West Point, wind was a light breeze down the river. Zach. Scutt, my brother, was at the helm, while I was below. I was about 200 yards from the west shore, a little below Cold Spring Foundry dock, when I took the helm from Zach.; this was west of the middle of the river. I was about half way betwixt the middle of the river and the west shore, heading straight up. When I took the helm I didn't see the Vaughan. I hauled the Telegraph off into the middle of the
141 river to the eastward, by porting my helm, as soon as I took it. Before I met the Vaughan, I saw the propeller Erastus Corning come down; I met her between Cold Spring and Stony Point. This was after I had ported my helm, and had got into the middle of the river. I gave the Corning one whistle; she answered, and passed on our port side, to the westward of 100 to 150 yards off from us. I saw at that time a propeller going up ahead of me; I was following her tracks up.

Q. Do you now know whether or not that was the Batt?

A. I can't tell positive, only from hearsay; I asked the pilot & he said it was the Batt. That propeller had a barge in tow—one barge—it seemed to be a covered barge—an ice barge; she had passed us during the night, going up. The minute I came to the wheel, I enquired what she was. I saw her next morning, and read her name, the "Batt;" at that time I didn't know her name; now, I know it was the Batt, because we caught up with her the next morning, and I read her name. After I passed the Corning I heard two whistles; they came from the boat ahead of me, going up; that was the only boat I saw when I heard the whistles. The minute after that, I saw a red light coming from right under the Batt's bow, sheering over to the west; then she
142 altered her course, steering southeast; this vessel with a red light

seemed to come towards me, heading me off. I blew my whistle once; I knew then she was a tug, but couldn't tell what tug. I should say she was half to a quarter of a mile off when I blew my whistle; it was this side of Butter Hill. I was then half way scarp, i. e., in the middle of the river, when I blew my whistle, heading northeast. After I blowed my whistle I altered my course a little more to the eastward. I heard no whistle in reply to mine. Northeast would be my proper course up the river, and carry me to the east of Polypus Island. I was not intending to pass to the eastward of Polypus Island, but to haul into the westward. After we got around Butter Hill more, I altered my course to the eastward, after blowing my whistle. The propeller seemed to be heading me off—running across my bows. Then she altered her course a little more for square towards me; she must have ported her helm a little. If we had stood still at the time I blowed my whistle, the propeller would have gone ashore on the east bank, the way she was then heading. My pilot, Zach., then sings out to me "You are coming head & head." I said, "I have got my helm hard aport & can't get away from her; I must stop." I then rung my bells—
143 first, 1 to slow, 1 to stop, 2 to back. The propeller was then 7 or 8 lengths of the canal-boat apart. These bells were answered by the engineer; the boat stopped & backed. Next occurred the collision. I don't think Telegraph was going ahead any; or if any, but very little, at time of collision. Barges were so high I could only see the water ahead. I think from the time that had elapsed after I rung the bell, that if we had run into a dock we should not have done any damage, for her engine has perfect command over her. The canal-boat on the port side of the Mary J. Vaughan struck the Minisink about 3½ foot aft of her stem, right on the bend of her port bow. I have seen the Minisink recently, & the marks of that blow, & measured it. Seemingly, the stem of the canal-boat struck the Minisink, from the marks; broke in 4 or 5 planks; hole was 2½ feet up & down, from water up; upper part of it about a foot wide, as repaired, and the lower part 2 feet wide. Exhibit A, G. F. B., is a correct diagram of the Minisink, and of the place where she was hit. At the time of the collision, my course was nearly due east. When this collision happened, the propeller left the canal-boat in front of the Minisink, and passed on, fast. I didn't see anybody on board the propeller. We backed
144 away from the canal-boat, and she swung across the river in front of us. I worked up to her so as to get the men off. When we stopped backing, we were probably 10 to 15 feet away from her. From the time I rang to back, I didn't stop backing till after the collision. I worked the Dutchess up, head-on, to the stern of the canal-boat, so that the men could get off; I think we took 3 men off; am certain we took 2. Then I laid still, & we drifted down the river. The Mary J. Vaughan came up & took the men off the barge; then we backed away & went up the river; think we passed on west side of canal-boat. I didn't see what injury was done to the canal-boat. When I last saw canal-boat she was under the bows of the Dutchess; didn't see her after that, that I remember. One stern line (breast line) of the Minisink was parted; not certain whether second was parted or not. On the reverse of Exhibit A, G. F. B., is a correct diagram of the river where collision occurred, and of the courses of the different boats, marked Exhibit B, G. F. B.—When I blew my whistle, that should indicate to him to go on my port side, according to the rules of navigation—if he heard it—that is, to go to the westward of me. After I blew my whistle, there was
145 nothing that I could have done to have avoided the collision which

I did not do—except to stop. I rung to stop as soon as I discovered there was any danger of a collision. According to my judgement, the Vaughan did not run her proper course; if she had, there would not have been any chance of a collision. When I blew my whistle to pass the Corning, before I saw the Vaughan, Zach. Scutt was below, getting a cup of tea. I don't know where Ralph Smith was.

Cross-ex'd by Mr. Van Santvoord:

I was interested in the Telegraph as charterer; that was the understanding with the agent of the Telegraph; M. Brevoort and I were to pay $25 a night for the use of the boat each night; we were to pay expenses, and Brevoort and I divided equally what was left; I went as captain; Zach. Scutt, my brother, went as pilot; I took turns with him at the wheel in running the boat; I acted as pilot; I am not a professed pilot; I never was employed as pilot on any other boat; Zach. was at the wheel when we left New York; he is younger than I; his watch was from New York to Newburg; Zach. was at the wheel and steering the Telegraph when she passed West Point; I was abed—just getting up—in the act of dressing myself; I came out just after we had turned Magazine Point; I went to the pilot-house; found Zach. there; don't recollect whether any one was with him at that time or not;
146 I have no recollection of seeing any one there at that time. When I came into the pilot-house, Zach. said he believed he would go and get a cup of tea or coffee, and I took the wheel. That was just below the Foundry dock of Cold Spring. I had not seen the Vaughan before Zach. went down to tea; of course don't know where she was at that time. I was on the westerly side of the river when he went down to tea. There was no one then with me at the wheel, nor up to the time of collision. I couldn't tell whether there was or not any man on the deck of the Telegraph from the time Zach. went down to get his tea until he came up again; Zach. didn't come up into pilot-house till after collision. I didn't know Zach. was on forward deck till he sung out: "You are coming head & head;" he might have stood on forward deck, and I not have seen him. Vessels were then probably 100 yards apart—may be a little less; I think I had slowed her before he spoke to me; then I rung to stop; bells couldn't be answered unless there was a man in the engine-room to answer them; I couldn't see the engine nor into the engine-room; could only tell bells were answered by the action of the boat. Barges went ahead of us. I don't know that at time of ringing bells engineer was shovelling coals; he couldn't
147 have been, for he answered my bells; he answered them immediately after they were given; I know this by the action of the boat. I didn't know anything of engineer's being on deck, nor of Zach. going to him to tell him to ring the bell. I first saw the Vaughan come out from under another propeller's bow, on a sheer to the westward. I think Telegraph was then half way, or a little over, between Cold Spring dock & Little Stony Point. I was at that time in the middle of the river. Little Stony Point is nearer to the point opposite Butter Hill than to Cold Spring—about half way; it is probably a mile and a quarter (may be less) from Cold Spring to a point opposite Butter Hill; short ¼ mile from Butter Hill to Crow's Nest—100 to 150 yards, I judge. I gave no second signal to the Vaughan; I gave a signal to the Corning below Stony Point, & passed her below Stony Point; I gave one signal to the Vaughan—no other—heard no other—just before the boats came together; there was no escape of steam on the Telegraph before the collision; saw escape of steam from propeller's pipe; steam always

escapes from that when she works; Telegraph's helm was hard aport at time of collision and before; I ported it a little when I first blowed my whistle, and headed more to the eastward; I *hard* my helm hard aport just before I rung my bells to slow; I *hard* it hard on when
148 I rung the bell to stop. I am quite sure that I altered my course on giving the signal to the Vaughan.

Q. Shortly after this collision, haven't you stated that after the signal to the Vaughan, not hearing a reply, you didn't know what course the Vaughan intended, and did not put your helm aport, or to that effect?

(Obj. to.)

A. I didn't state so, that I know of.

Q. Didn't you state shortly after the collision, that after giving a signal to the Vaughan, not hearing a reply, you kept on your course up the river, or to that effect?

(Obj. to.)

A. I don't recollect saying so.

Q. Did you not make one or other of the above statements to Messrs. Stark & Ladd, or to one of that firm, in the office of the Northern Transportation Line, shortly after the collision?

A. I have no recollection what I did say to them. I turned my wheel a little aport first, immediately after blowing my whistle. I didn't put it hard down till after I began to slow; I don't think it was over ¾ minute after I began to slow before I rang to stop.

Q. Was not the slowing & ringing the bell to stop and to back, putting the wheel hard down, all about the same time; or if any, what interval of time between?

A. It would take ¾ minute, or something like that; I didn't
149 ring my bells in a heap; I gave distinct bells. On an ebb the tide strikes over to the east shore after passing Butter Hill.

Q. Assuming that the collision had taken place at the point represented on your diagram, Ex. B, with the tide ebb—with the boats all stopped in the water—how long would it have been before your boat and the boats in tow would have been on Stony Point?

A. Probably ten minutes, drifting; we had to hurry up to get away from it. It is about 52 miles from New York to Stony Point; collision was between 2 & 3 o'clock a. m.; we were going, probably, 6 or 7 knots an hour past the land; ought to be 8 through the water. My idea is that the tide there runs 3 to 3½ knots an hour; about 2 knots when I was there.

Re-direct:

Speed was not uniform all the way up. Strongest current, I think, is around West Point. Wind has considerable to do with our speed. Right away after collision I called the attention of one of the deck hands to the lights. He reported them all right. We carry a headlight on her bow; top light aft on the flag staff, & a green light forward of the smoke pipe; these are turning lights. I saw all of these except the bow light, and the deck hand reported that all right.

Mr. Lyon waives cross-examination.

CHA'S SCHUTT.

Sworn to before me this 20th day of June, A. D. 1865.

GEO. F. BETTS,
U. S. Comm'r.

(Here follows diagram, marked page 149.)

150 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, George F. Betts, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witnesses are material and necessary in the cause in the caption of the said deposition named, and that these depositions are taken by consent.

I further certify that due notification of the time and place of taking the said deposition signed by me, was made out and served on the proctors for the libellants, and for The Propeller Mary J. Vaughan, to be present at the taking of the said depositions, and to put interrogatories, if he or they might think fit.

I further certify that, on the 20th day of June, in the year of our Lord one thousand eight hundred and sixty-five, I was attended by the proctors for the respective parties, and by the witness, who was of sound mind and lawful age, and the witnesses were by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions were by me reduced to writing in the presence of the witness and from their statements; and after carefully reading the same to the witnesses they subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of filing the court for which the same were taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand and seal this 21st day of June, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the eighty-ninth.

GEO. F. BETTS,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

151 (Indorsed:) Vol.——, page——. United States dist. court for the southern district of New York. John Gordon & al v. The Propeller Mary J. Vaughan & St'boat Telegraph. Deposition on the part of the , taken before , United States commissioner, on the day of , 18—. Filed the 23d day of June, 1865.

152 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this twenty-fourth day of July, in the year of our Lord one thousand eight hundred and sixty-five, I, John A. Os-

born, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the United States court building, 39 and 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Joseph Burtolph, to testify and the truth to say, on the part and behalf of the claimant of the steamboat "Telegraph," in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the southern dist. of New York, at New York City, in the district aforesaid, wherein John Gordon et als. are libellants vs. The Propeller "Mary J. Vaughan," and Steamboat "Telegraph," their tackle, &c., are respondents.

And the said Joseph Burtolph, being about the age of thirty-seven years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Joseph Burtolph, and he did thereupon depose, testify, and say as follows, viz:

I live in Franklin County, town of Fort Covington, New York; dealer in hoops and staves. I was on the canal-boat R. M. Adams, at the time of the collision referred to in this case. This canal-boat was fastened to the starboard side of the propeller Mary J. Vaughan. Nothing particular induced me to go on the canal-boat. I had some freight on the R. M. Adams; the freight was hoops, and was stowed on deck. The collision occurred about 4 o'clock in the morning. I did observe a moon at the time. At the time of the collision I was in the cabin. I had my coat & boots off, & lay in the upper berth at the time. I was awake. I heard a whistle, and it was but an instant before I heard the
153 crash. I thought the whistle was from our tug-boat, the Vaughan. I jumped right out of the berth, and went out. When I got out, I saw that the other canal-boat, lashed to the other side of the propeller, was gone. I thought when I came out on deck, that our tug-boat was moving along at a fair rate. I discovered that we were going towards the shore or mountains—west shore. I saw the boat that had collided with us, when I came out; we had got by her. I couldn't tell in what position she lay. Capt. Lewis came out ahead of me—Sherman Lewis, captain of the boat I was on. Captain Lewis asked the captain of the propeller, what had become of the other boat. He made some reply, but don't recollect what the reply was. The captain of the Vaughan, I thought, was then in the wheel-house. I went on the forward part of the boat when I came out. I told Capt. Lewis to tell the captain of our tug-boat, to back up, as I thought we were getting pretty close to the shore. I walked along still further forward in the bow of the boat, and I saw that we were quite close to the shore. I came along back about the middle of the canal-boat. Capt. Lewis says to capt. of the Vaughan: "Back up, or you'll sink me." The capt. came down out of the wheel-house, and went down to the engineer & said: "Why don't you back?" The engineer said he was a backing. Captain said: "No you are not,

you are going ahead." I saw the engineer shift the rods; the en-
154 gine then was reversed. The propeller backed up then, turned around to the left, I think, went up the river until we came to the steamer Telegraph. The Telegraph was standing still at the time we got to her. I did not see the canal-boat, Sherman Lewis, then. The Telegraph moved on up the river. We passed on then up the river, and discovered the canal-boat Sherman Lewis. She was then in a sinking condition, and went down. At the time the engineer shifted his engine and began to turn around, I did not see the Telegraph, yet I was looking in that direction, but don't know how far we were from the Telegraph. I think our being under the shade of the mountain would make it some darker. When I heard the crash, I turned myself out of the berth, and went on deck almost immediately. When I got out on deck, we had passed the vessel that had collided with us, but did discover something lying above us.

X-'d by Mr. Van Santvoord:

There was a load of hoops on the deck of the R. M. Adams; I saw them there when she started from Troy. Those hoops were piled up about three feet high.

Q. Were they not piled up as high as eight feet?

A. No, sir, they were not; nor about eight feet. The cabin was in the stern of the boat; entered that cabin from the stern; about 4 steps
155 down into the cabin. I got up on the lumber when I came out on deck. All the deck of the boat was covered with those hoops, except what was used for other purposes. The deck over the cabin aft was higher than the deck of the boat forward; about 2 feet higher. In saying these hoops were piled three feet, I mean that they were not four feet from the top of the main deck. All I judge from is, that they generally put them on about that height. The height from the floor of the cabin to the deck of the cabin, is about 6½ feet. I could not, standing on the 2nd step of the cabin, look over the hoops. When I put my head out, standing on the 2nd step, the two tows were entirely separated. I am not boatman enough to have become acquainted with the use of a steam-whistle as a signal. This whistle was rather a faint, short blast; did not see where it came from. I had heard whistles before that; don't know how long before, nor where it was; the whistle sounded near, & I supposed it was that of the Vaughan. When I first came out, we were not in the shade of the mountain, rather on the west side of the river. I didn't see that the bow lines from the Adams to the Vaughan were parted; I don't recollect, that is, I did not see the bow of the R. M. Adams swing out from the Vaughan. I don't recollect of the Vaughan stopping or backing for the purpose of pulling the bow of the R. M. Adams in. The bows of the two canal-boats projected ahead
156 of the propeller. I think that there was a line run from the bow of one of the canal-boats to the other. I didn't see the line parted between the two canal-boats, nor I don't know anything about the bows of the R. M. Adams swinging off. The first stopping I noticed, was the stopping to keep off the shore. She stopped, backed, and turned around, and went up the river and stopped on the south side of the Telegraph. Some men got off the Telegraph on to the R. M. Adams. I I had seen the Telegraph before we stopped near her; saw a craft when I first came out on deck, which I suppose was the Telegraph. Can't say how far we were from her; can't judge distances as well on water as on land. That was my first trip on the river on a canal-boat. I have never been a boatman anywhere. Sherman Lewis was the capt. of the

R. M. Adams. Aaron Thatcher was on board. They were all the crew of the Adams that I recollect. I know that the R. M. Adams had barley on board. There were hoops on the Sherman Lewis; they were a little higher on deck of the Lewis than on the Adams; were a different kind of hoop. I saw the hoops towed in at Cold Spring that were on the Sherman Lewis. They were near the west shore; can't say how near; might have been 50 rods; may not have been more than 25 rods. The middle of the river there is about ¾ of a mile. These hoops were nearer the west shore than to the middle of the river.

157 Re-direct:

I saw the boat sink from under the hoops. It was about 15 minutes after that we began to tow them in. I can't say where the hoops were with any degree of certainty. I saw the boat sink after the men from the Telegraph were taken on the Adams. After the Telegraph moved on up the river, the Vaughan went on until we came to the hoops. Telegraph did not lay still after the men were taken on from the Adams, but she went on between us and the sunken boat on her way up the river. Then we went after the sinking boat, and after that I saw the boat go down. After the boat went down, I saw the hoops float. I should judge the hoops were over the place where the boat sunk, when I first saw them. Lines were thrown to the men on the hoops. I don't know whether small boats went out to them or not.

JOSEPH BUTOLPH.

Subscribed & sworn to before me this 24th day of July, 1865.

JOHN A. OSBORN,
U. S. Com'r.

158 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of York, ss:

Be it remembered that, on this twenty-fourth day of July, in the year of our Lord one thousand eight hundred and sixty-five, I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the United States court building, 39 and 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Sherman Lewis, to testify and the truth to say, on the part and behalf of the claimant of the Telegraph, in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the southern dist. of New York, at New York City, in the district aforesaid, wherein John Gordon et als. are libellants vs. The Propeller "Mary J. Vaughan" and Steamboat "Telegraph," respondents.

And the said Sherman Lewis, being about the age of fifty-four years, and having been by me first cautioned and sworn to testify the truth,

the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Sherman Lewis, and he did thereupon depose, testify, and say as follows, viz:

I live at Chatauqua, Franklin County, New York. I am engaged in boating; I have boated of late years from Montreal to New York; for sixteen years from Champlain to New York. I was the captain & owner of the canal-boat R. M. Adams, which was lashed to the starboard side of the steamer Mary J. Vaughan at the time of the collision in question in this action. I started from Fort Covington, on the river St. Lawrence. At Troy I was taken in tow by the Mary J. Vaughan. Previous to the collision the boat Sherman Lewis was in tow on the other side of the Vaughan. My son, Mandred Lewis, was her captain. We had a stern line out to the tug, a spring line from my stern up pretty near to
159 his bow and a bow line from the bow of my boat to the bow of the tug. These lines were securely fastened. I had no control myself over the management and course of my boat. At the time of the collision, I was sitting at the table in the cabin of my canal-boat. I was dressed. I heard a whistle & heard the crash; they were not an instant apart. The whistle was, in my judgment, from the Mary J. Vaughan. I was familiar to some extent with the sound of her whistle. I immediately went on deck—quickly; I had hoops for a deck load. The hoops were piled about 4 feet above my deck—may be a little over. It is about 4 steps up from my cabin-floor to the deck. There were no hoops at the entrance of my cabin. I could look over the whole of the deck load, and look off on all sides. When I was going out a barge lay about where the Sherman Lewis ought to have *lay* and we were passing right by it. We were passing very fast; we went by it almost in an instant. I looked to see if I could see the Sherman Lewis or hear any sound from her. I heard nothing from her. When I came on deck the Vaughan was headed a little to the westward; when I got on the hoops she was, at any rate; she was on a turn towards the westward; I should think we were a little to the westward of the centre of the river; near to the centre
160 than to the west shore. I stood on deck some 3 or 4 minutes. I supposed the capt. of the Vaughan was going to stop, but he didn't. I went to the captain; I think he stood right in the wheel-house door. I said "Captain, for God's sake, stop your boat, for you almost into the mountain; if you don't stop you'll sink me." He made no answer. He got right down by the side of the rail & walked back to the engine-room & said to the engineer, "Why don't you back up?" Says he, "I be a backing up." Capt. Brayton said to him, "No, you aint; you are going ahead." Then he reversed his engine & stopped, & Capt. Brayton, I believe, asked one of my men to go & put a pole over the bow to see if he could touch the rocks. I told Capt. Brayton, I wished he would turn around as quick as he could, and go back to see what had become of the other boats. He did so; he turned to the left. He first came back northeast, crosswise of the river. We came up to the Telegraph, so that my bows struck a barge alongside of the Telegraph. It was on the west side. Two men came on to my boat from the barge—Mandred Lewis & Frederick Field. They had come on to the barge from the Sherman Lewis. The Telegraph was lying still. The barge hid the Sherman Lewis from my sight. I did not see the Sherman Lewis
161 before she went down. The Telegraph started on as soon as the men came aboard. After that I saw the hoops from the Sherman Lewis, with two men on them. The hoops were a few rods to the eastward and down from where the Telegraph was, when I took the men off and in about the centre of the river. I should think it was nearly a

mile from the place where we were when I put my head out of the cabin door, to the spot where we turned. I didn't know the man who was steering the Vaughan at this time. Did not see anybody steering while I was on deck. There was no breakage of the fastenings of my boat; the line across from my boat over to the Sherman Lewis was parted from the Sherman Lewis' bow. The line from my bow to the bow of the Vaughan was not parted. It was my line. I should be likely to know if the line had parted. It was mine—that I had purchased. I swear positively that we shifted no lines until we got to New York. I didn't know who the engineer was. SHERMAN LEWIS.

Subscribed & sworn to before me this 24th day of July, 1865.

JOHN A. OSBORN,
U. S. Comm'r.

162 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witnesses are material and necessary in the cause in the caption of the said deposition named, and that they reside more than one hundred miles from the place of trial of the above cause.

I further certify that no notification of the time and place of taking the said deposition signed by me, was made out and served on the adverse parties to be present at the taking of the said deposition and to put interrogatories, if he or they might think fit, because said depositions were taken by consent of the respective parties and without the legal notice required.

I further certify that on the 24th day of July, in the year of our Lord one thousand eight hundred and sixty-five, I was attended by the proctors for the respective parties, and by the witnesses who were of sound mind and lawful age, and the witnesses were by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions were by me reduced to writing in the presence of the witnesses and from their statements; and after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of filing the court for which the same were taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand and seal, this 24th day of July, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the ninetieth.

JOHN A. OSBORN,
United States Commissioner, duly appointed by the Southern Circuit Court of the United States, for the District of New York, in the Second Circuit.

163 (Indorsed:) Vol. —, page —. United States dist. court for the southern district of New York. John Gordon vs. The Propeller Mary J. Vaughan & St'boat Telegraph. Deposition on the part of the taken before United States commissioner, on the day of 18—. Filed the 20 day of Feb'y, 1866.

164 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this third day of August, in the year of our Lord one thousand eight hundred and sixty-five, I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the United States court building, 39 and 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Ava Thatcher, to testify and the truth to say, on the part and behalf of the claimants of the "Mary J. Vaughan," in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the southern dist. of New York, at New York City, in the district aforesaid, wherein John Gordon et als. are libellants vs. The Propeller "Mary J. Vaughan" & The Steamboat "Telegraph," &c.

And the said Ava Thatcher, being about the age of fifty-six years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Ava Thatcher, and he did thereupon depose, testify, and say as follows, viz:

I am 56 years old. I live at Ticonderoga, Essex Co., N. Y. Am a boatman. Have been so ever since I was old enough—over 20 years. Boated on canal-boats on Erie & Champlain Canals, and on Hudson River. Was on the boat "R. M. Adams" in October, 1864. Sherman Lewis was the captain. We had a Frenchman, myself, and Mr. Buttolph (the man who owned the hoops) on board. They were on board the night of collision. Don't remember the hour we left Troy. Must have been in forenoon, I think. The "R. M. Adams" was on the right-hand side—the west side, coming down. The "Sherman Lewis" was on the other side. The "R. M. Adams" had hoops, barley, and potatoes on board. The barley was taken on board at St. Timothy, Canada.
165 They call it Beauharnois, sometimes. The Sherman Lewis had barley on board, also. She received her load at same place. I saw her receiving it. She received it from the same parties and the same firms. The barley on our boat was in the hold. The hoops were on deck. They covered nearly the whole deck, from port to aft. We left room enough to get around; so we could open the hatch, too. The hoops on deck were perhaps 6 feet high; perhaps not so high, as we had taken off some at Waterford. We generally calculate to load as high

with hoops as the boat will go under the bridges. I had then been about a month & a half on the Adams, I think. I went on her, after that, until she stopped in the fall. She carried no other load of hoops while I was on her. The cabin was on the stern of the Adams. The entrance was from the aft. Just room to turn the tiller handsomely betweenit & cabin entrance. The deck aft was perhaps a very little higher, enough so as to make the water run forward; not enough to notice it. No quarter or poop deck. The trunk over entrance of cabin was perhaps 2½ feet higher than deck. That was covered. There was no other cabin beside this one. I knew of the collision. I was there at time it happened. It was between 3 & 4 a. m; about 3½, I think. It began to be break of
day, but still dark; saw the moon. It was most down, if I recol-
166 lect right. It was a small one. I came out about the time of collision. Was on deck when they struck. I was the 1st man on deck on our boat. Capt. Lewis followed me. I was on top of hoops when they struck. I had just come out of cabin. I heard a whistle on the Vaughan. The whistle blowed about the time they struck. It was only one short sound—just a little whoop once. I saw the Telegraph when I got on the hoops. Did not notice her stop; thought she was going right along. Could not see them strike, as I was not where I could see it. Knew they struck, but could not see where they hit. I was away at stern of boat, & the boat being on the other side, the works and boiler of steamboat prevented me seeing where they were coming to, exactly. When they struck I heard the crash, & then saw the Sherman Lewis broken loose. She went off forward of the barge which was in tow of Telegraph, out of my sight—up the river. The Telegraph stopped right away after they struck, because her barge stopped & lay right aside of the Vaughan, in the place where the Sherman Lewis had been. Don't know whether the Lewis swung around bow of Telegraph and barges. When I first came out on deck I saw no one on deck of Adams. There was no one. Could not see the Sherman Lewis.
Did not look. Was looking at Telegraph from time I came up,
167 to see if they were going to run over us. Kept my eye on the Telegraph until they struck and broke the boat loose. After that I was looking after the Lewis to see if I could see her. Did not notice whether Vaughan had stopped & backed before collision. Should not think she had stopped. The Vaughan is a propeller propelled by a wheel in the stern. Did not take notice which way that wheel was working. Could hear the steamboat working, (I mean the Vaughan,) & saw her going ahead. The boat was going ahead. The headway of the Vaughan was not stopped in the water, I should think. The "Vaughan" stopped & backed after a while, but did not stop then. The place of this collision was opposite Cold Spring, near the middle of river, where we struck. Before we got turned around we had got pretty well on west side of river. Rather to the west of middle of river when we struck, if anything. Saw the hoops afloat after collision. Saw the boat sink. Saw the hoops float off at time she struck. There were 2 men on them. When we got there the hoops were not a great way from middle of river, a little to the west, perhaps. They had not moved far from where the boat sunk. Land was high & rocky on west shore. Could not
say if place where boat sunk was in the shade of the land. I
168 should think it was not. I noticed I could see across the river at the time. I could see the east shore. Could see the west shore, too. Could see the east shore the plainest. It was lighter, I should think, on the east shore. I should think the daybreak made it a little lighter there. There was a line from the bow of our canal-boat

to the bow of the other. That line was parted. I saw it. No other line from our boat to propeller was parted. Don't recollect the bow of the Adams swinging out from the Vaughan at time of collision, or of parting of that line. Did not see any one touching the tow-line from the Adams to the Vaughan before starting, after the collision. Don't recollect seeing any one tauting that line at any time. The Vaughan turned around up the river, & came up to the stern of the barge—starboard side of the Telegraph. One of the men taken from the barge was Mandred Lewis, and the other one, I don't recollect his name—"Fred," they called him. We then asked them where the boat was; & he said "his boat was sunk; he did not know." After we took them off from barge we came round in front, where we could see the Sherman Lewis. I should think she was about 6 rods right forward of the Telegraph, and the barges alongside of the Telegraph. The Telegraph was lying still at that time. The Vaughan went ahead to the boat—in sight of her.

When we took the men off, the Telegraph was between us & the
169 boat, & we could not see her. Think the Telegraph was laying still while we went toward the Sherman Lewis. When we came in sight, her bow was sunk out of sight, & the men stood on top of the hoops. We came within a short distance of the Lewis, & stopped. Some one asked why they did not go & get those men off. There was no answer. We staid there till we saw the Lewis go out of sight, & the hoops raise off the deck. That left the 2 men standing on the hoops. After the Lewis sunk, the Vaughan went up to the hoops, hitched a line on them, and towed them into Cold Spring dock. Don't remember whether the Telegraph passed us before or after we got the hoops off. We hitched to the hoops before the Telegraph started up the river. That is my best recollection. Recollect her starting up the river. Think that was not until we got away with the hoops. Before I came on deck I had been lying on cabin floor, asleep. Had waked up and put my boots and coat on; before that, when I waked up, Capt. Lewis was in cabin. He got up about the time I did. Don't know but he was up. He & Mr. Buttolph followed me upon deck.

Cross-examined by Mr. Fithian:

When I came on deck the boats were very close together. Had only
170 time to give a look before they struck; that was about all. Could see the steamboats approaching each other. Could not know certain if both were moving. The blow sheered the Vaughan toward the west, & she kept right on. Saw no perceptible stopping of our boat from the collision till she got near the west shore. When I first saw Capt. Brayton he was coming from forward part of Vaughan toward the engine. That was before the Vaughan had stopped—can't tell how long. I was then on the hoops on our boat. Saw no one with Capt. Brayton at that time. Capt. Lewis says to Brayton, "Why don't you back this boat up?" Then Brayton went to engine-room & says to engineer, "Why don't you back the boat up?" Engineer said, "I am backing her." Brayton said, "No, you ain't; you are going ahead." Capt. Brayton asked me to put over a pole to see how deep the water was, and I did so, and I could not touch bottom. This was after Capt. Brayton's communication to the engineer. When the Vaughan turned around to look for the lost boat, she turned toward the left. Could not tell how far we had gone after the collision till we turned around; should think ½ mile. I could not tell. Don't know what speed we were going before the collision. I had been up & down all night. When I came on deck just before the collision, did not notice any difference between

the speed the Vaughan was going & that she had been going when I had been on deck at different times during the night. The capt.
171 of the Vaughan said he had left his pilot at Troy, but that he had a man who could steer. He did steer.

Q. From what you saw of the manner that this man steered, both before, & at, & after the collision, state whether or not he was, in your opinion, a competent steersman.

(Obj'd to.)

A. I should think he would not be a competent man in that place.

Re-direct, by Mr. Van Santvoord:

Q. On what facts do you form this opinion?

A. Because I was taken in by him, and he said he could steer, but had not piloted on river much. I also observed that he did not keep his boat steady. Don't think or claim to be competent to judge of his qualifications as a pilot. I have worked a good while. I don't claim to be a pilot on the North River at all.

Cross-exa. waived by Mr. Lyon.

AVA THATCHER.

Subscribed & sworn to before me this 3rd day of August, 1865.

JOHN A. OSBORN,
U. S. Comm'r.

172 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this fourteenth day of August, in the year of our Lord one thousand eight hundred and sixty-five, I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the United States court building, 39 and 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Patrick Cary, who is recalled to testify and the truth to say, on the part and behalf of the claimant of the Vaughan, in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the southern dist. of New York, at New York City, in the district aforesaid, wherein John Gordon et als. are libellants vs. The Propeller "Mary J. Vaughan" & Steamboat "Telegraph."

And the said Patrick Cary, being recalled, I did carefully examine the said Patrick Cary, and he did thereupon depose, testify, and say as follows, viz:

I have been examined in this case before. The Mary J. Vaughan was stopped before the collision. She was next backed. She was backing at the time of the collision. After we had stopped & backed the capt.

sung out to go ahead, & found the boat on the starboard side, unmanageable. This was after the collision. She was unmanageable because her lines were all slacked up—I mean her backing line, spring line, & stern line. The backing line led from the head of the canal-boat, on our starboard side, to the bow of the Mary J. Vaughan. The spring line led from the aft of the same canal-boat to the bow of the Vaughan. That was the towing line. The stern line led from the stern of canal-boat to the stern of the Mary J. Vaughan. There was
173 another line from the bow of the canal-boat, on starboard side, to the bow of the other canal-boat, on the port side. That line was parted by the collision. No lines from canal-coat on the starboard side to Vaughan were parted; they were only slacked. The bow of the boat, on the starboard side, swung off from the Vaughan as we attempted to go ahead. When we found the boat unmanageable we stopped. The captain & I went to work & got the lines taut, so that she was manageable. The captain held the slack of the backing line, and I hove the slack of it up with the bar of the windlass. The other 2 we took up by hand. While we were doing this the Vaughan was standing still. The capt. told the engineer after that to back. The engineer, who was standing by the pilot-house, went aft, and went to working the engine. Next I was aft, and the captain came aft, and asked the engineer what way he was working the engine. I did not hear the answer. The engine was stopped, & reversed by the engineer after the captain spoke; could not say how it was working before the captain spoke; know of no difference between the captain & engineer as to the engine working. It was worked right until that time without any mistake. If the engine was working ahead it was a mistake. Capt. Lewis did not speak to our captain about the working of the engine.
Capt. Lewis came up right after the collision. All the words I
174 heard Capt. Lewis say were, "Rufe, where is the other boat?" After the captain had spoken to engineer about working the engine, he worked her back till her head swung around, and we went around up to where we got the men off the barge. We worked back, so as to turn her so much quicker. Between 5 and 10 minutes between time of collision and time of taking up the slack of the lines; think it was as much as that; could not swear certain. Between time of collision & the tauting of these lines I had got out of pilot-house, and got up forward. The capt. went to the boiler-room, I believe, and got a lamp. He & I was looking to see if any damage was done to us—whether we were making any water or not. Then the captain told me to go below and see if she was making any water. That was the first I heard from any one on the boat on starboard side. This was when Capt. Lewis asked where the other boat was. I went below, & saw there was no water; then went up & told captain, and he went in pilot-house and started her. Then it was we found this boat unmanageable. Before he started her she was doing nothing, laying right still. She was stopped ever since time barge struck us. When the captain started ahead again the Sherman Lewis was along under bow of the Telegraph.

175 Cross-ex'd by Mr. Fithian:

My first name is Patrick. I was at the wheel in pilot-house before and at the time of collision. Capt. Brayton was also at wheel with me. W'm Rogers, (engineer,) Tom Lloyd, (2nd engineer,) and Mrs. Brayton, (captain's wife,) were on our boat, besides me & captain. When the two vessels came together don't know where Mrs. Brayton

was. After collision, & after I came out of pilot-house, saw her in gangway on port side. At time of collision think Rogers was down forward in forecastle asleep. Saw him come up as soon as collision had taken place. At time the boats came together suppose Tom Lloyd was at the engine, but didn't see him. When at pilot-house, with my hand on the wheel, I could not see the engine or the propeller wheel. When I stood at steering wheel, all the way I could tell whether our engine was working back or not was by the motion of the boat. Might have been 10 seconds after boats came together before I left the wheel; left the wheel of my own will. Went first to see if we were not filling; went from wheel-house out front door forward, and looked over bow of boat. Stood there till capt. came with a lamp; then he & I looked there and saw no danger; then I went down in forcastle; might have been there a minute, looking if there was any leak. When I came out of
176 forcastle was sent forward, and stood there on deck doing nothing; stood there till captain found the boat unmanageable; then he stopped her and fixed her. I helped fix her. Captain and I together took a hand at all parts, tauting those lines when we had got lines fast. Captain told engineer to back her; he told him by speech. I stood by the captain—by the spring line forward—when captain gave that order. Could not see engine, but saw Lloyd (2nd engineer) at that time. I believe Rogers was down below, putting on his boots. Can't swear that engineer backed her; he put engine in motion same way. It might have been ½ a minute. I had just time to go aft before captain gave other order. Did not hear orders. The engine was stopped & reversed, so as to go different from what it was going. I heard the captain say, "How are you working the engine?" The engine worked may be ½ minute or more in that way. She was worked then by the bells. Captain went in the pilot-house and worked her by bells. I was then aft. The engine was standing still at the time captain & I were fixing the lines. After lines were fixed I can swear 1st order captain gave to engineer was to go back.

Re-direct:

That last order was given by word of mouth.

177 Q. How far had the Vaughan gone from the place of collision at the time she backed to come around up the river, where she took the men?

A. I couldn't say as she went any. She could not have gone as much as ½ a mile. I couldn't tell, because when we struck barge it killed our way in the water, & we were not going any. From that time until time of engineer's mistake in working her, we had not gone the length of the boat; after that, because of the mistake in engineer, can't say how far she had gone; couldn't say how far; could say it was not ½ a mile. Engine did not have time enough to work ½ mile.

Re-cross, by Mr. Fithian:

Since I was examined before I have been aboard the Mary J. Vaughan all but a week; am now on her. Capt. Brayton is her captain. The captain & I have had no conversation about this matter, except he once spoke to me about the examination of the Telegraph's crew.

Q. Do you mean to swear that you have had no conversation with Capt. Brayton since your last examination on the subject of this mistake of the engineer?

A. Not till this morning. He asked me whether I remembered
178 any mistake. The Mary J. Vaughan lies in New Jersey. She

arrived in New York about 12 last night. Capt. Brayton did not come down on her. I had seen Capt. Brayton between 5 & 6 o'clock last Friday, at Troy.

Cross-examination waived by Mr. Lyon.

PATRICK CARY.

Subscribed & sworn to before me this 14th day of August, 1865.
JOHN A. OSBORN,
U. S. Comm'r.

179 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that. on this fourteenth day of August, in the year of our Lord one thousand eight hundred and sixty-five, I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the United States court building, 39 and 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Rufus Brayton, who is recalled, to testify and the truth to say, on the part and behalf of the claimants of the Mary J. Vaughan, in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the southern dist. of New York, at New York City, in the district aforesaid, wherein John Gordon et als. are libellants vs. The Propeller Mary J. Vaughan, & Steamboat Telegraph, &c.

And the said Rufus Brayton, recalled, being about the age of years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Rufus Brayton, and he did thereupon depose, testify, and say as follows, viz:

I have been examined before in this case. I was captain of the Mary J. Vaughan at the time of the collision. Before the collision, after the engine was stopped, she was backed. She was backing at the time of the collision. The first thing after the collision she was stopped from working back—this was immediately after the collision. The canal-boat on the port side was parted before we stopped working the engine back. I next went and got a light to see how bad we were injured. I went forward with the light & examined the injury where she was hit. I held the light over the side of the bow & I couldn't see that she was injured below the water-line; her upper works & fenders were
180 carried away above. I sent Cary below to see if the water was running into her; he went below & reported to me that he could hear no water coming in. I then went into the pilot-house & started her ahead. She went 3 or 4 turns ahead & then I stopped her, finding the propeller was unmanageable, owing to the lines attached from the

propeller to the "Adams" being slack, the backing lines particularly; the backing lines led from the bow of the Vaughan to the bow of the canal-boat; a spring line led from the stern of canal-boat to a spring cleet on the forward part of propeller; the other line was a stern line, and led from near abreast, it led from the stern of the canal-boat to the propeller's bitts aft. A line from the bow of the starboard canal-boat to the port canal-boat was parted by the collision; that lines was used to keep the bows of the canal-boats in to the propeller. After that line parted the bow of the Adams swung out after I started ahead; finding the boat unmanageable I gave her two or three turns back, then I stopped her from working back & went out of the pilot-house, & Cary & I hove in the slack of the lines. I think Lloyd (the engineer) helped, but won't be sure. After we got the lines hove in taut, I told the engineer to work her back. He stood near me. Cary & the engineer
181 went aft together and I went in the pilot-house. As soon as he started working the engine I saw that she was working ahead instead of back. I went back to the engine-room & asked Lloyd why he did not work her back; his answer was, "You said go ahead." I told him I said "go back," & then he reversed the engine & worked her back. I then went into the pilot-house, & after he had worked her back ½ minute or less, I stopped her; I hove her wheel hard astarboard, told the men on the canal-boat to put their wheels astarboard & started ahead. Came round up the river alongside the Telegraph's barge & took the men off. This mistake of the engineer was as much as 10 minutes after the collision. At the time the mistake was made the Telegraph & Sherman Lewis were above & to the eastward of us. I ordered the engineer to back, to swing the propeller's bow around. There had been no mistake between me and the engineer prior to this. I discovered the mistake that she was going ahead as soon as she started. She might have made 40 turns. She makes about 80 a minute. The Vaughan was lying still while we were tautening the lines—still in the water. I think the Vaughan had not gone more than 100 yards from the place of the collision to the place where we
182 backed, to come round. We were some 2 or 3 lengths of the boat nearer to the west shore at the time she turned to back around than she was at the time of the collision. I recollect Capt. Sherman Lewis speaking to me soon after the collision, at the time I had got the light—he had not spoken to me before that—he did not speak to me after that time—said nothing at all after this time.

Cross-ex'n waived by Mr. Lyon.

Cross-examined by Mr. Fithian:

Q. When you stood in the pilot-house at the helm, could you tell how you engine was working except by the motion of your boat?

A. Yes, sir.

Q. Could you see your engine or your propeller's wheel, standing in your pilot-house & steering?

A. No.

Q. State how you can tell then whether your engine was working back or forward?

A. By her exhaust; I mean the steam exhaust; it has a different sound between a forward & a backward motion.

RUFUS BRAYTON.

Subscribed & sworn to before me this 14th day of August, 1865.

JOHN A. OSBORN,
U. S. Comm'r.

183 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this fourteenth day of August, in the year of our Lord one thousand eight hundred and sixty-five, I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress, entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the United States court building, 39 and 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Ann Brayton, to testify and the truth to say, on the part and behalf of the claimants of the Vaughan, in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the south. dist. of New York, at New York City, in the district aforesaid, wherein John Gordon et als. are libellants against The Propeller "Mary J. Vaughan" & Steamboat "Telegraph."

And the said Ann Brayton, being about the age of 37 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Ann Brayton, and she did thereupon depose, testify, and say as follows, viz:

I am the wife of Capt. Brayton.

(Mr. Fithian, counsel for cl'm't of Telegraph objects to the examination of this witness on the ground that she is the wife of one of the owners & cl'm'ts of the Mary J. Vaughan.)

Was on the Mary J. Vaughan at the time of the collision last October. Before the collision I was in my berth in the cabin, aft, near stern of boat. The first thing I heard was a sharp whistle. Had not been sound asleep, as I was restless, not being in the habit of being in one of those boats. This was a steam-whistle as loud as I ever heard the whistle blow. The *rest* I heard was bells ring & the engine stop.

184 Am not acquainted with the signals by bells; don't know what they imported. The cabin where I was sleeping is near the wheel which propels the boat, and that could not stop without my hearing it. Don't know how long an interval was between the whistle and the boat stopping. Lay there thinking about getting up & then I heard the wheel stop. It was some few minutes after I heard wheel stop I got out of bed. Next I made preparation to dress myself, got on my shoes & a balmoral skirt; next came the crash. I was still in the cabin. It was with such force as to knock me down. Had seen nothing outside of cabin up to that time. I went out as soon as I could get a shawl around me. I then opened door and went out. The first thing that met my eye was the bow of the barge of other steamboat. I was right opposite my cabin door. The canal-boat which had been on that side of the Vaughan was gone. Did not see it until we got apart from the Telegraph; can't say how long after. The Vaughan was still when I

came out. The barge was moving slowly by us. Saw the Telegraph. Her barge was alongside of her. She was outside the barge. Heard something about the time of collision that sounded like the escape of steam, but couldn't say what it was. It wasn't as *hard* [loud] as the
185 whistle I heard before the boat stopped. It sounded short but not very loud. Heard of a difference between Capt. Brayton & the engineer as to the working of the engine; that was after the collision—some ten minutes, perhaps—I couldn't say. The barge had then left us. We were alone. Could not say how long between 1st whistle and collision; according to my best judgement, think it was 10 to 15 minutes.

Cross-examination waived by Mr. Fithian & Mr. Lyon.

ANN BRAYTON.

Subscribed & sworn to before me this 14th day of August, 1865.

JOHN A. OSBORN,
U. S. Comm'r.

186 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witnesses are material and necessary in the cause in the caption of the said deposition named, and that they

I further certify that no notification of the time and place of taking the said deposition signed by me, was made out and served on the adverse party or their proctors to be present at the taking of the said deposition and to put interrogatories, if he or they might think fit, because it was agreed that the above-named witnesses give their depositions without the usual legal notice by the commissioner.

I further certify that, on the 14th day of August, in the year of our Lord one thousand eight hundred and sixty-five, I was attended by and by the witnesses who were of sound mind and lawful age, and the witnesses by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions by me reduced to writing in the presence of the witnesses and from their statements; and after carefully reading the same to the witnesses they subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of filing the same with my own hand in the court for which the same were taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand and seal, this 14th day of August, in the year of our Lord one thousand eight hun-

dred and sixty-five, and of the independence of the United States the ninetieth.

JOHN A. OSBORN,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

187 (Indorsed:) Vol—, page—. United States dist. court for the southern district of New York. John Gordon & al v. The Propeller Mary J. Vaughan & St'boat Telegraph. Deposition on the part of the taken before , United States commissioner, on the day of 18 . Filed the 14th day of Aug't, 1865.

188 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this twenty-first day of August, in the year of our Lord one thousand eight hundred and sixty-five, I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office at the United States court building, 39 and 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Thomas Lloyd, to testify and the truth to say, on the part and behalf of the claimants of the Vaughan, in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the south. dist. of New York, at New York City, in the district aforesaid, wherein John Gordon et als. are libellants against The Propeller "Mary J. Vaughan" & Steamboat "Telegraph."

And the said Thomas Lloyd, being about the age of twenty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Thomas Lloyd, and he did thereupon depose, testify, and say as follows, viz:

I was on the Mary J. Vaughan at the time of the collision, in the capacity of 2nd engineer; had been on the Vaughan since the 15th of June, 1864, and the collision was in October, 1864. At the time of collision I was the engineer on duty. I heard a signal before the collision. It was a whistle from our boat—a pretty sharp whistle. It could be heard I suppose a mile or a mile & a half. It was a loud blast & a long blast. At the time of the whistle I was fixing the fire in the fire-room. The fire-room was down below the engine-room. After fixing the fire I came up in the engine-room. After hearing the signal I stood around in the engine-room, perhaps 8 or 10 min-
189 utes, time enough to oil and give her tallow. After this they the captain of the Vaughan rang one bell to slow her.

That signal was obeyed. I obeyed the signal & slowed her. The next thing, about 3 minutes after, she rung another; that was to stop. I obeyed that signal. I stopped her engines. The engines were stopped five minutes; then they rung two bells to back, & I backed her. After that—I suppose a couple or three minutes—she had time to make 80 or 90 revolutions, when the collision took place. In my judgments she had made revolutions enough back to stop her headway in the water before the collision. The boat that was hit was on the right-hand side or starboard side of the Vaughan. I am wrong—the boat struck was on the left-hand or port side of the Vaughan. She sank; that is all I know; she was gone from the Vaughan. After the collision I recollect about the boat on the starboard side swinging out. I came out on deck after the collision & assisted in hauling in a spring line. I did not assist in hauling in any other line. The spring line is the towing line. After the collision there was a misunderstanding between Capt. Brayton & me about working the engine. I was out on deck looking around & went up forward to see the damage that was done & the captain says to me, "Work her back;" that was to throw her head around so we could go up around the Telegraph, so as to see
190 where the canal-boat was. Well, instead of my doing that—I was a little excited too—I started the engines ahead, & she had not run more than a minute before the captain told me I was wrong, & I reversed her. After I reversed her we went around & up to the Telegraph. That was the only mistake as to the working of the engine. That mistake was 15 minutes, I am certain, after the collision, because I had time to go down and open the fire-doors in the fire-room. I opened the fire-room doors to keep the steam from running up, while the boat was lying still. While I was assisting in hauling in the spring line, the boat Vaughan was standing still. The collision was on the west side of the river. It was nearer the west shore than the middle of the river. I saw the hoops that were picked up, but did not see them when they were picked up. I don't recollect of any whistle or escape of steam on either boat about the time of the collision. I left the Vaughan in November after election, and went to Hartford. I enlisted there; went from Hartford to City Point. I came home, at Havre de Grace, two weeks before Christmas. I have been here altogether three weeks, one week in New Jersey, and two weeks here. Capt. Brayton first knew of my being here on Monday week.

X-'d by Mr. Fithian:

The captain told n e on the Monday that he wanted me as a wit-
191 ness in this case. He gave me no money to come. I agreed to come when he wanted me. I saw the captain to-day at Pier 6. I told the captain in our conversation *when* I recollected about the collision. I went on the Vaughan after the collision. Was on her two or three weeks, running about the harbor here. I had been running a stationary engine for 6 or 8 months at Wilmington, Delaware, before going on the Vaughan. I got down from the engine-room in the fire-room by a ladder. The distance was about 5 feet. When I came out on deck to aid on the spring line, I looked to see where the vessel was that came against us. The boat was across the river from us. I am certain Capt. Brayton told me to back her at the time I went ahead as stated before, when I was excited after the collision. I recollect now of his telling me so. I recollect of passing another boat just before this boat run against us. It was a few minutes before the collision.

Don't know whether she was a propeller or a side-wheel. I was in the engine-room.

(The witness wishes to correct his testimony as to the time he came home from City Point. It was two weeks before the 4th of July, instead of Christmas, as before stated.)

THOMAS LLOYD.

Subscribed & sworn to before me this 21st day of August, A. D. 1865.

JOHN A. OSBORN,
U. S. Comm'r.

192 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause in the caption of the said deposition named, and that he resides more than one hundred miles from the place of trial of the above cause.

I further certify that no notification of the time and place of taking the said deposition signed by me, was made out and served on the adverse party, or their proctors, to be present at the taking of the said deposition, and to put interrogatories if he or they might think fit, because it was agreed between the respective parties, that the deposition of the witness be taken without the legal notice from commissioner.

I further certify that, on the 21st day of August, in the year of our Lord one thousand eight hundred and sixty-five, I was attended by the proctors for the respective parties and by the witness, who was of sound mind and lawful age; and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness and from his statement; and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession, for the purpose of filing the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and seal this 21st day of August, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the ninetieth.

JOHN A. OSBORN,
United States Commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

193 (Indorsed:) Vol.—, page—. United States dist. court for the southern district of New York. John Gordon & al. v. The Pro-

peller Mary J. Vaughan, The Steamer Telegraph, her tackle, &c. Deposition on the part of the , taken before , United States commissioner, on the 21 day of August, 1865. Filed the 20 day of Feb'y 186 .

194 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Friday, the 13th day of July, in the year of our Lord one thousand eight hundred and sixty-six:

Present, the Honorable Cha's L. Benedict, district judge.

JOHN GORDON ET AL.
vs.
THE PROPELLER MARY J. VAUGHAN, HER engines, &c., & The St'boat Telegraph, her engine, &c.

This case having been heard on the pleadings & proofs, and argued & submitted on briefs and points, by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court, that the collision in the pleadings mentioned was caused by negligence on the part of both the steamboats proceeded ag'st, and that the libellants accordingly recover in this action ag'st The Propeller "Mary J. Vaughan," her engines, &c., and The St'boat "Telegraph," her engines, &c., the damages by them sustained by reason of the collision set forth in the pleadings, together with their costs be taxed, reserving, however, until the further order of the court, all questions as to whether the said damages shall be apportioned between the said steamboat & propeller, or how otherwise to be borne.

And it is further ordered that it be referred to a commissioner of this court to ascertain & compute the amount of such damages, and
195 report thereon to this court, with all convenient speed.

CHA'S L. BENEDICT.

(Indorsed:) Filed the 13th day of July, 1866.

196 U. S. district court.

JOHN GORDON ET AL.
vs.
THE PROPELLER MARY J. VAUGHAN, &C., AND The Steamboat Telegraph.
Reference on decree.

Mr. Lyon for libellants; Mr. Van Santvoord for Propeller Vaughan; M. Fathian for Steamboat Telegraph.

JULY 26, 1866.—Adj'd to Aug. 1.
AUG. 1.—Adj'd to Sept. 20.
SEPT. 20.— " " " 26.
SEPT. 26.— " " " 27.
SEPT. 27.— " " Oct. 5.
OCT. 5TH. " " " 6th, 1 p. m.
OCT. 6TH. " " " 10th, 1 p. m.
OCT. 10TH. " " " 12th, 1 p. m.
OCT. 12TH. " " " 19th, 1 p. m.
OCT. 19TH.—

had a set of Fairbanks' scales. We had a difficulty about setting it, and he allowed me the difference of 40 pounds a draft in all I had received before that, and he didn't use his weights any longer.

(Mr. Lyon moves to strike out all this evidence as irrevelant and not competent to impeach the actual weighing at the time proved by the witnesses. Motion denied. Exception.)

This was prior to 1864.

Cross-ex'd by Mr. Lyon:

It was in 1859 or 1860.

his
DAVID O. + BRIGGS.
mark.

Sworn to before me this 24th of April, A. D. 1867.

GEO. F. BETTS,
U. S. Comm'r.

LOU. WASHBURN sworn.

I reside at Fort Ann, Washington Co., N. Y. I own the scales referred to by the last witness. I bought them from Frothingham & Wiltman, Montreal. I took them to the city scales; had them tried and the weights sealed. I was afterwards at Lynch's, at St. Timothy, and had those scales & weights there. I compared them with the Lynchs' weights. The result was that Lynch's five-pound weights was
203 nearly six and a half ounces lighter than the five-pound weight I had. That made forty pound difference in weight on the platform, when the five-pound weight was placed on end of beam. The two weights were taken to a druggist's and placed in a balance, and it took six ounces and nearly a half to make Lynch's weight balance mine.

That was in the fall of 1859.

(Same motion as above, & ruling, & exception.)

LOU. WASHBURN.

Sworn to before me this 24th day of April, 1867.

GEO. F. BETTS,
U. S. Com'r.

AMASA D. LADD sworn.

Since 1859 I have been in the habit of receiving consignments of boats loaded with barley by the Lynch's at St. Timothy up to last season. The boat R. M. Adams, came consigned to me as agent to settle and collect freights.

Q. How did those cargoes hold out, as compared with the quantities in the bills of lading?

(Obj'd to for reasons above. Obj'd overruled. Exception.)

A. They were very much short here from the bill of lading.
204 The B. L. of the "Adams," was 2,894 bushels and 37 pounds, @ 48 pounds to the bushel. She was short 158 bushel and 34 pounds. Gordon, Bruce & McAuliff were consignees of the cargo. I don't recollect that I ever knew a cargo of barley from the Lynch's holding out to agree with the B. L. The differences have been 200 to 300 bushel. The St. Lawrence was 300 bushel on a cargo of 3,900, I believe. The "Baltic" was 200 bushel short on 3,700 to 3,800 bushel.

(Mr. Lyon makes same motion to strike out. Motion overruled. Exception.)

AMASA D. LADD.

Sworn to before me this 24th day of April, 1867.

GEO. F. BETTS,
U. S. Com'r.

Evidence closed. Adj'd to May 2d, 12 o'c. m.

(Endorsed:) U. S. district court. John Gordon et al. vs. The Propeller Mary J. Vaughan & Steamboat "Telegraph." Min. in ref'ce.

205 [L. S.] The President of the United States of America to Finlay Gairdner, esq., counsellor at law, of Montreal, greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you a commissioner and by these presents do give you full power and authority diligently to examine upon their corporal oaths, or affirmation, before you to be taken, and upon the interrogatories & cross-interrogatories hereunto annexed, Michael P. Lynch & Owen Lynch, of the dist. of Beauharnois, in the province of Canada, as witnesses on the part of the lib'll'nts, in a certain cause now pending undetermined in the circuit court of the United States of America for the southern district of New York, second circuit, wherein John Gordon & others are libellants ag'st The Propeller Mary J. Vaughan & St'boat Telegraph.

And we do further empower you to examine on the same behalf, and in like manner, any other person or persons, who may be produced as witness before you; and we do hereby require you, before whom such testimony may be taken, to reduce the same to writing, and to close it up under your hand and seal, directed to Geo. F. Betts, clerk of the dist. court of the United States for the southern dist. of N. Y., as soon as may be convenient after the execution of this commission; and that you return the same, when executed as above directed, with the title of the cause endorsed on the envelope of the commission.

Witness the Honorable Sam. R. Betts, judge of the dist. court of the United States, at the city of New York, this 26th day of Dec'r, in the year of our Lord one thousand eight hundred and sixty-six, and of our independence the ninety-first.

GEO. F. BETTS, *Clerk.*

DAVID LYON, *Proctor for Libellants.*
F. J. FITHEAN, *Attorney, P'r for Telegraph.*
C. VAN SANTVOORD, *P'r for Mary Vaughan.*

206 *Instructions.*

I. All the commissioners named in the commission shall have notice of the time and place of executing it; and if any of them do not act, let the fact that they were notified, or could not be notified, and the reasons for their not acting, be stated.

II. The commission must be executed by the commissioner named therein.

III. The acting commissioner will examine the witnesses separately, after publicly administering to them the following oath or affirmation:

"You do swear that the answers which shall be given by you to the interrogatories proposed to you shall be the truth, the whole truth, and nothing but the truth; so help you God."

The oath shall be administered (except in cases hereinafter mentioned) by the witness laying his hand upon and kissing the Gospels.

But if the witness shall desire it, he shall be permitted to swear in the following form: "You do swear, in the presence of the ever-living God;" and while so swearing he may or may not hold up his hand in his discretion.

Or, if the witness shall declare that he has conscientious scruples against taking an oath, or swearing in any form, he shall be permitted to make his affirmation in the following form: "You do solemnly, sincerely, and truly declare and affirm," omitting the words "So help you God."

IV. The general style or title of the depositions must be drawn up in the following manner:

"Deposition of witnesses, produced, sworn, (or affirmed) and examined, the day of , in the year one thousand eight hundred and at , under and by virtue of a commission issued out of the district court of the United States for the southern district of New York, in a certain cause therein depending and at issue, wherein John Gordon and others are libellants ag'st The Propeller Mary Vaughan and Steamboat Telegraph, as follows:

A. B., of (insert his place of residence and occupation) aged years and upwards, being duly and publicly sworn, (or affirmed,) pursuant to the directions hereto annexed, and examined on the part of the , doth depose and say as follows: First. To the first interrogatory, he saith, &c. (Insert the witness's answer.) Second. To the second interrogatory, he saith, &c., and so on throughout.

If he cannot answer, let him say that he knoweth not.

V. If there be any cross-interrogatories, the witness will go on thus: First. To the first cross-interrogatory, he saith, &c., and so on throughout.

VI. When the witness has finished his deposition, let him subscribe it, and the acting commissioner will certify as follows:

Examination taken, reduced to writing, and by the witness subscribed and sworn to this day of , 18 , before

——— ———, *Commissioner.*

VII. If any papers or exhibits are produced and proved, they must be annexed to the depositions in which they are referred to, and be subscribed by the witness, and be endorsed by the acting commissioners, in this manner:

"At the execution of a commission for the examination of witnesses, wherein

(Same as above.)

this paper writing was produced and shown to (insert the witness's name) and by him deposed unto at the time of his examination, before

——— ———,

——— ———,

Commissioners.

207 VIII. The acting commissioners will sign their names to each half sheet of the depositions and exhibits.

IX. If an interpreter is employed, one of the commissioners will administer to him the following oath, and certify thereto:

"You do solemnly swear, that you will truly and faithfully interpret the oath and interrogatories to be administered to a witness now to be examined, out of the English language into the language, and that you will truly and faithfully inter-

pret the answers of the said thereto, out of the into the English language."

Let the depositions be subscribed by the interpreter as well as by witness, and certified by the acting commissioners, as follows:

Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter, and sworn to by the witness, this day of , 18 , before

——— ———, *Commissioner.*

X. The commissioner will make return on the back of the commission by endorsement, thus:

"The execution of this commission appears in certain schedules hereunto annexed."

——— ———, *Commissioner.*

XI. The depositions and exhibits (if any) must be annexed to the commission, and then the commission, the directions, the interrogatories, cross-interrogatories, depositions, and exhibits, must be folded into a packet and bound with tape. The acting commissioners are to set their seal at the several meetings or crossings of the tape, endorse their names on the outside, and direct it thus:

U. S. DISTRICT COURT,
Southern District of New York:

JOHN GORDON & ALS.
vs.
THE PROPELLER MARY VAUGHAN, &C.

To Geo. F. Betts, esquire, clerk of the district court of the United States for the southern district of New York, at the city of New York.

XII. When the commission is thus executed, made up, and directed, it must be returned in the manner specified in the direction of the commission, if there be any.

XIII. If there be no direction on the commission, specifying the manner in which it is to be returned, then it must either be delivered to the court by one of the acting commissioners personally, or else be forwarded by some person coming to this place, and who must be liable, on his arrival, to make oath before one of the judges or the clerk of the court:

"That he received the same from the hands of A. B., one of the commissioners, and that it had not been opened or altered since he so received it."

XIV. In case of returning the commission by mail, it is to be deposited by one of the acting commissioners in the nearest post office, he making the following endorsement thereon:

"Deposited in the post office at , this day of , 18 , by me.

"——— ———, *Commissioner.*"

In case of returning the commission by a vessel, it is to be deposited by one of the acting commissioners in the letter-bag of such vessel, he making upon the commission the following endorsement:

"Deposited in the letter-bag of the , now lying at , and bound for the port of New York, this day of , 18 , by me.

"——— ———, *Commissioner.*"

The commissioners are requested to be very careful to observe the foregoing instructions, as the smallest variance may vitiate the execution of the commission.

If the commission be returned by an agent, let him be instructed to call, on his arrival at this place, upon , who will direct him as to its delivery.

208 U. S. DISTRICT COURT,
Southern District of New York:

JOHN GORDON & OTHERS
ag'st
THE PROPELLER "MARY J. VAUGHAN & STEAMboat "Telegraph."

Interrogatories to be administered to Michael P. Lynch, of the district of Beauharnois, in the province of Canada, on the part of the libellants in the above-entitled action.

First interrogatory. Where did you reside in October, 1864, & what was your business?

Second interrogatory. Was there a quantity of barley shipped on board the canal-boat "Sherman Lewis," of which Mandred Lewis was master, on or about the 7th day of October, 1864; if yea, how many bushels of barley were then put on board said canal-boat, and at what weight per bushel, and did said canal-boat *store*, on her voyage after such loading with said barley on board?

209 Interrogatories to be administered to Owen Lynch of said district of Beauharnois:

First interrogatory. Where did you reside, and what was your business in October, 1864?

Second interrogatory. Was there a quantity of barley shipped by you on board the canal-boat "Sherman Lewis," of which Mandred Lewis was master, on or about the 7th day of October, 1864; if yea, how many bushel of barley were there put on board said canal-boat, and at what weight per bushel, and did said canal-boat start on her voyage after such loading said barley on board?

DAVID LYON,
Proctor for Libellants.

210 United States district court.

JOHN GORDON AND OTHERS
ag'st
THE PROPELLER MARY J. VAUGHAN ET AL.

Cross-interrogatories to be administered to Michael P. Lynch & Owen Lynch, to accompanying the aforegoing direct interrogatories:

First. If in answer to the several direct interrogatories you assume to say how many bushels of barley was loaded on to said canal-boat "Sherman Lewis," then state, were you personally present while said barley was being loaded; if yea, were you present all the time of such loading?

Second. Did you keep the tally on count of the number of bushels loaded; was it by weight or measure; and, if by weight, how many pounds to the bushel?

Third. Did any other person, and if so, who kept the count or tally of said barley?

Fourth. Did you keep or make any memorandum or figures of

211 said amount of barley, or count? If yea, annex the same to your answer hereto.

Fifth. Was the canal-boat "R. M. Adams," being loaded at the same time and place, and with, and from, the same lot of barley as the "Sherman Lewis;" if yea, who kept the count for the R. M. Adams, and what was the quantity she had on hand? State fully, if you know.

F. J. FITHIAN,
Proctor for Telegraph.
C. VAN SANTVOORD,
Proctor for "Claimants" of the "Vaughan."

Deposition of witnesses, produced, sworn, and examined the eight day of March, in the year one thousand eight hundred and sixty-seven, at the city of Montreal, in the province of Canada, under and by virtue of a commission issued out of the district court of the United States for the southern district of New York, in a certain cause therein depending and at issue, wherein John Gordon and others are libellants against The Propeller "Mary J. Vaughan" and Steamboat "Telegraph,"

212 as follows:

Owen Lynch, of the village and district of Beauhornious, merchant, aged forty-eight years, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the libellants, doth depose and says as follows:

First. To the 1st interrogatory he saith: I reside in the district of Beauharnois, in Lower Canada, and my business was that of a general merchant.

Secondly. To the second interrogatory he saith: Such barley was shipped on or about the fourth of October, 1864, on board the canal-boat "Sherman Lewis." I believe that three thousand six hundred and eighty-four bushels of the said barley were then shipped at the weight of forty-eight pounds to the bushel. We never delivered any at any time at the weight of forty pounds to the bushel. The said canal-boat did start on her voyage after such loading, with the said barley on board.

Cross-interrogatories:

First. To the first cross-interrogatory he saith: I was not present.

Secondly. To the second cross-interrogatory he saith: I did not

213 keep a tally, but know that we never delivered barley at any other weight than forty-eighty pounds to the bushel.

Thirdly. To the third cross-interrogatory he saith: My nephew, Michael Lynch, who was my clerk, did so.

Fourthly. *In* the fourth cross-interrogatory he saith: I did not, but I examined those made by my nephew, before mentioned, & found them to correspond with the bill of lading.

Fifthly. To the fifth cross-interrogatory he saith: The "Sherman Lewis" and the "R. M. Adams" were loaded from the same granary, one immediately after the other, but I do not recollect which was loaded first. My nephew, before mentioned, Michael Lynch, kept the tally for the "R. M. Adams," on our behalf; to the best of my belief, "Sherman Lewis," also. I would say that the "R. M. Adams" had about three thousand bushels of barl'y on board, but cannot say precisely. (Two marginal notes are good.)

OWEN LYNCH.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 8th day of March, 1867, before me.

W. F. GARDNER,
Commissioner.

Michael P. Lynch, of the village and district of Beauharnois,
214 in Lower Canada, clerk, and twenty-eight year, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the libellants, doth depose and say as follows:

First. To the first interrogatory he saith: I reside in Beauharnois aforesaid, and was clerk in the business of my uncle, Owen Lynch.

Second. To the second interrogatory he saith: There was; the number of bushels put on board the said canal-boat was three thousand six hundred and eighty-four bushels, and three pounds over. The bushels were of the weight of forty-eight pounds each. Immediately after getting the bill of lading signed, the said canal-boat started with the beforementioned load of barley.

Cross-interrogatories:

First. To the first cross-interrogatory he saith: I was personally present during the whole time of loading the said barley.

Secondly. To the second cross-interrogatory he saith: I kept the tally of the number of bushel loaded. It was done by weights—forty-eight pounds to the bushel.

215 Thirdly. To the third cross-interrogatory he saith: As far as I recollect, I did it by myself.

Fourthly. To the fourth cross-interrogatory he saith: I kept a memorandum at the time in a little paper-book; but, after getting the way-bill signed, did not preserve it. We never kept these tallies.

Fifthly. To the fifth cross-interrogatory he saith: There was another boat loading at the same time, and from the same lot of barley; but I do not recollect, at this distance of time, what her name was, or who kept tally for her cargo, whether myself or another, and I cannot either remember what was the quantity she had on board. (One marginal note is good.)

M. P. LYNCH.

Examination taken, reduced to writing by the witness, subscribed, and sworn to this eight day of March, 1867, before me.

W. F. GAIRDNER,
Commissioner.

216	Commissioner's fees	$12 00
	Clerk's	2 50
	Postage to witnesses, &c.	1 90
	In Canadian currency	$16 40

(Endorsed:) U. S. district court. John Gordon et al. versus The Propeller Mary J. Vaughan & Steamboat Telegraph. Commission.

District court of the United States for the southern district of New York.

JOHN GORDON ET AL.
vs.
THE PROPELLER MARY J. VAUGHAN AND The Steamboat Telegraph, &c.
} Commissioner's report.

In pursuance of a decretal order made in the above-entitled cause the 13th day of July, in the year of our Lord one thousand eight hundred

and sixty-six, by which, among other things, it was referred to
217 the undersigned, one of the commissioners of this court, to ascertain and compute the amount due the libellants for the damages sustained by the collision in the pleadings mentioned, and to report thereon to this court, with all convenient speed—

I, George F. Betts, the commissioner to whom the matter was referred, do report that I have been attended by the proctors for the libellants and for the respective claimants, and have taken and examined the testimony offered in support of the libellant's claim, and in opposition thereto, and find that there is due to the libellants for their said damages, as specially set forth in the schedule hereto annexed, and which forms a part of this report, the sum of five thousand nine hundred & eighty $\frac{61}{100}$ dollars ($5,980 $\frac{61}{100}$.)

Dated the 14th day of May, A. D. 1867.

All which is respectively submitted.

GEO. F. BETTS,
U. S. Commissioner.

SAMUEL E. LYON,
Proctor for Libellants.

218 *Schedule.*

Amount of barley lost by the collision, 3,480 bushels, of 48 pounds to the bushel, @ $1 70 per bushel..	$5,916 00	
Deduct from this 2½ % com'ission.....	147 90	
		$5,768 10
Deduct from this freight (9 cents in gold @ 216) 19 $\frac{44}{100}$ cents per bushel.....		676 51
		$5,091 59
Add interest @ 7 % from Nov. 14, 1864, to date of reports, 2 yrs. & 6 mos.....		889 02
Total.....		$5,980 61

(Endorsed:) Vol. 18, page 483. United States district court for the southern district of New York. John Gordon et al. vs. The Propeller Mary J. Vaughan and The Steamboat Telegraph, &c. S. E. Lyon, proctor for lib'l'ts. Commissioner's report. Ent'd order conf. nisi, 4 days. Filed the 14th day of May, 1867.

219 U. S. DISTRICT COURT,
Southern District of New York:

JOHN GORDON & OTHERS
against
THE PROPELLER MARY J. VAUGHAN & STEAMboat Telegraph.

The exception of the libellants to the report of George F. Betts, esq., commissioner, &c., filed in the above-entitled action May 14, 1867:

First. For that said report does not find and report that the libellants are entitled to recover of the claimants the sum of two hundred and seventy dollars, ($270,) being the amount of the advances made by them, the libellants, on account of the freight-money of the cargo of the canal-boat "Sherman Lewis."

Second. In that said report does not find and report that the libellants are entitled to recover of the claimants the sum of one hundred & forty-seven $\frac{90}{100}$ dollars, ($147 90,) being the amount of their (said libellants') commissions as consignees of the cargo of the said canal-boat "Sherman Lewis."

220 Third. For that said commissioners in his said report deducted from the value of said barley the sum of $676 51 for the freight upon the same.

DAVID LYON,
Proctor for Libellants.

(Endorsed:) 18—501. U. S. district court. John Gordon & other ag'st The Propeller Mary J. Vaughan & Steamboat Telegraph. Exceptions of libellants to report of commissioner. David Lyon, proctor for libellants, 37 Wall st., N. Y. Filed May 22d, 1867.

U. S. district court for the southern district of New York.

THE PROPELLER MARY J. VAUGHAN, IMPLEADED with The Steamboat Telegraph,
ads.
JOHN GORDON & OTHERS, LIBELLANTS.

221 Exception of the claimant of the Vaughan to the report of the commissioner herein, dated the 14th day of May, 1867:

First exception. For that the commission , in computing the damages for the loss of the barley on board the canal-boat "Sherman Lewis," which, as is alleged in the libel, was in course of transportation from Canada to the city of New York, & which is alleged in the libel to have been, and was, totally lost in transit, by the sinking of the canal-boat "Sherman Lewis," from collision, while in tow of the Propeller Vaughan, on the Hudson River, between Newburgh & Cold Spring, in the Highlands, on the morning of 26th October, 1864, has not adopted as the basis of his computation of the damage the value in specie, or in currency on a specie basis, of said barley at the time and place of shipment at St. Timothy, Canada East, (72½ cents per bushel, or less, or according to the requirement of the evidence in that behalf,) but instead thereof has adopted as the basis of such computation or valuation of said barley at New York, the place of its destination.

222 Second exception. For that the commissioner has computed the damages for the loss of the barley upon a valuation of the barley at $1 70 per bushel of 48 pounds, upon proofs showing that like barley—consigned to the same consignees in New York (the libellants) by the boat "R. M. Adams," also in tow of the propeller "Vaughan" at the time of the collision & sinking of the Sherman Lewis, which was sold in New York, on or about the 27th day of October, 1864, after the arrival of the boat "R. M. Adams," on the 26th or 27th Oct., 1864—was worth at the time in New York but $1 70, per bushel of 48 pounds, in currency at the time greatly depreciated—$2 16 in said currency being worth but $1 00 in specie; whereas, if correct, in adopting the valuation in New York, the place of its destination, as the basis of his computation for the loss of the barley, he should have reduced the rate at which the barley by the "Adams" was sold, or its value in New York in depreciated currency, to the specie standard, as the legal measure of its value.

Third exception. For that the commissioner, in computing the damages, has proceeded upon a valuation in currency, at the time greatly

depreciated below the specie standard, as though said currency
223 were proper money of account of the United States—specie dollars of the coinage of the United States or the multiple of such dollars—dimes, or tenth-cents, or hundreth, or their equivalent for general purposes; or the valuation of the barley, as contained in said report, at $1 70 per bushel, is not warranted by any evidence in the case, and is contrary to the evidence.

Fourth exception. For that the assessment and amount of damages as reported, upon the proofs in the case, are virtually in currency, at the time greatly depreciated, for its full nominal amount, for the payment of which the court is not authorized to make a decree.

Fifth exception. For that the enhancement of the damages by the assessment as aforesaid—upon a valuation in currency at the date of such valuation, at the time greatly depreciated below the specie standard, at the full nominal amount of such currency, while it has the effect to deprive the claimant without his consent to, and without any agreement having been made by him, in terms or by implication, for a valuation in currency, of the privilege secured to him by the act of Congress
224 in that behalf, if the holder of U. S. Treasury notes, to pay a demand against him in money of account of the United States resting upon a specie basis in such notes, and is evasive of that act, would be attended with the great injustice in this case, under the circumstances of the subsequent appreciation of the currency shown by the proof; that it would obligate the claimant to pay not only the difference between the specie and the nominal value of the depreciated currency at the date of the report and the decree made therein, but the greater difference between the specie value and the nominal value of the currency at the date of such valuation.

Sixth exception. For that the commissioner in computing the damages for the loss of the barley has proceeded in part upon a valuation thereof in a depreciated currency, instead of adopting the specie value as the true legal measure.

Seventh exception. For that the commissioner in his computation of the damages has proceeded upon a valuation of the barley lost, in currency greatly depreciated below the specie standard at the time
225 of such valuation, at its full nominal value, without deduction for subsequent appreciation, as shown by the proofs.

Eight' exception. For that the commissioner has allowed interest, as in his report, as part of the damages upon an assessment in currency as aforesaid, notwithstanding the subsequent appreciation of said currency, as shown by the proofs, before the date of his report, and to an amount greater than the interest.

Ninth exception. For that the commissioner has allowed interest at the rate of seven per cent., whereas, if allowable, it should have been at the rate of six per cent.

Tenth exception. The report should be referred back to the commissioner to reform his report, and to report the value of the barley at the time and place of its shipment, with directions to assess the damage on that basis in specie, or its equivalent, and to state the time and place of his valuation of the barley lost, and in what medium, and the objections made on the assessment, and his disposition of them, or with such other or further direction as to the court shall seem fit and proper.

226 Dated New York, May 22d, 1867.

Dated New York, May 22d, 1867.

C. VAN SANTVOORD,

Proctor & Advocate for Claimant of the "Mary J. Vaughan."

(Endorsed:) 18—501. U. S. district court, S. D. of New York. The Propeller Mary J. Vaughan, impl'd, &c., ads. John Gordon et al. Exception to commissioner's report, dated May 14, 1867. C. Van Santvoord, proctor for cla't of the "Vaughan." Filed May 22, 1867.

227 U. S. district court for the southern district of New York.

THE STEAMBOAT TELEGRAPH, IMPLEADED, &c., *ads.*
JOHN GORDON ET AL., LIBELLANTS.

Exceptions of the claimant of the "Telegrap'" to the report of the commissioner herein, dated the 14th day of May, 1867:

First exception. For that the commissioner in computing the libellants' damages for the barley claimed for herein has estimated such damages upon a basis of what the said commissioner has found said barley to be worth at the port, in the city of New York, when said damages should have been estimated upon the price & value of said barley in specie at the port or place of shipment in Canada.

Second exception. For that the said commissioner has found and reported the value of said lost barley to be the value & price in the city of New York of one dollar & seventy cents per bushel of 48 pounds, after deducting cost of transportation, whereas the said commissioner should have found & estimated, and the proofs showed, the value of said
228 barley at the port of New York, after deducting cost of transportation and commission, to be but seventy-two cents per bushel of 48 pounds in the money of account of the United States.

Third exception. For that said commissioner has computed interest upon the estimated value of said barley, at the rate of seven per cent., upon the sum which said barley would amount to at the estimated value of $1 70 per bushel, when he should have computed interest at and after the rate of six per cent. only upon a sum which said barley would amount to at the price or value of seventy-two per bushel only.

Fourth exception. For that the said commissioner has assumed to estimate and appraise the value of said lost barley at a price or value in a depreciated paper currency, when he should have estimated the price & value of said barley at its price & value in the gold & silver coin & money of account of the United States.

Fifth exception. Said report should be referred back to the commissioner to be readjusted and corrected according to the law & evidence, & with such instructions as to the court shall deem just.

Dated New York May 22, 1867.

F. J. FRITHIAN,
Proctor & Advocate.

229 (Endorsed:) 18—501. U. S. district court for the southern district of New York. The Steamboat Telegraph, impleaded, &c., ads. John Gordon et als., libellants. Exceptions to commissioner's report. F. J. Frithian, proctor. Filed June 4th, 1867.

230 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday, the 4th day of Feb'y, in the year of our Lord one thousand eight hundred and sixty-eight.

Present, the Honorable Samuel Blatchford, district judge.

JOHN GORDON & AL.
vs.
THE PROPELLER MARY J. VAUGHAN, HER tackle, &c., The St'boat Telegraph, her tackle, &c.

This case having been heard on the exceptions of the claimants of the Vaughan and of the Telegraph, respectively, & the exceptions of the libellants to the com'r's report herein, dated the 14th day of May, 1867, and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the first exception of said claimants of the propeller Vaughan & the steamboat Telegraph, respectively, be, & the same is hereby, allowed, and also their ninth exception; that the second, third, fourth, fifth, sixth, seventh, & eighth exceptions of said claimant, respectively, falling out with the allowance of the said first exception to said report, no decision is necessary as to the points involved in those exceptions; and the said first exception being allowed, their said second, third, fourth, fifth, sixth, seventh, & eighth exceptions are neither allowed or disallowed, nor considered, and are to be regarded as stricken from the record.

That the exceptions of the libellants to said report be, & the same are hereby, disallowed.

231 And it is further ordered, adjudged, and decreed that it be referred back to the commissioner to ascertain the value of the barley lost at the time and place of its shipment, St. Timothy's, Canada East, in specie or Canadian currency on a specie basis, in dollars and cents, equivalent to money of that denomination in gold, or in the coinage of the United States; & that he compute the damages for the loss of the barley on the basis of such valuation in dollars & cents of the coinage of the United States, with interest at six per cent. from the date of the shipment, without converting the same into legal-tender or paper currency of the United States; to the end that in the coming in of his report, the libellants may have a decree for their damages for the loss of the barley computed as above herein directed.

SAM'L BLATCHFORD.

D. L.
C. V. S.
F. J. F.
F. C. V. S.

(Indorsed:) Filed the fourth day of Feb'y, 1868.

232 District court of the United States for the southern district of New York.

JOHN GORDON & ALS.
vs.
THE PROPELLER MARY J. VAUGHAN, &C., & The St'boat Telegraph, &c. } Commissioner's report.

In pursuance of a decretal order made in the above-entitled cause on the fourth day of Feb'y, in the year of our Lord one thousand eight hundred and sixty-eight, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the value of the barley lost at the time & place of its

shipment, at St. Timothy's, in specie, &c., with interest at the rate of 6 °|₀, without converting the same into legal-tender, and to report thereon to this court with all convenient speed—

I, George F. Betts, the commissioner to whom the matter was referred, do report that I have been attended by the proctors for the libellants and for the claimants, and have taken and examined the testimony offered in support of the libellants' claim and in opposition thereto, and do find that the value of the barley lost was, at the time & place of its shipment, at St. Timothy's, in specie, 70 cents per bushel of 48 pounds; and that the libellants have lost 3,480 bushels, making their loss amount to the sum of..... $2,436 00
Int. from Oct. 7, '64 @ 6 °|₀..... 488 00

Making the total..... $2,924 20
The sum of twenty-nine hundred & twenty-four $\frac{20}{100}$ dollars.

Dated the 11th day of Feb'y, A. D. 1867.

All which is respectfully submitted.

GEO. F. BETTS,
U. S. Commissioner.

D. LYON, *Proctor for Libellants.*

233 (Indorsed:) Filed the 11th day of Feb'y, 1868.

234 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Friday, the 21st day of February, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Hon. Samuel Blatchford, district judge.

JOHN GORDON, JAMES BRUCE, AND MICHAEL J. McAULIFF
vs.
THE PROPELLER MARY J. VAUGHAN, HER tackle, &c., and The Steamboat "Telegraph," her tackle, &c.

Final decree.—Conf. comm'ss report.

This cause, having been heard on the exceptions filed by the libellants & by the several claimants, respect*fully*, to the report of Geo. F. Betts, esq., commissioner, dated May 14, 1867, and the court having disallowed the exceptions of the libellants, & allowed the first and ninth exceptions of the claimants, and ordered their remaining exceptions to be stricken from the record; and it having been referred back to said commissioner to ascertain the value of the barley lost at the time and place of
235 its shipment, St. Timothy's, Canada East, in specie or Canadian currency on a specie basis, in dollars and cents, equivalent to money of that denomination in gold, or in the coinage of the United States, & that he compute the damages for the loss of the barley on the basis of such valuation in dollars and cents of the coinage of the United States, with interest at six per cent. from the date of the shipment, without converting the same into legal-tenders or paper currency of the United States:

On reading & filing the second report of Geo. F. Betts, esq., United States commissioner, to whom the above matter was referred back, by which there is reported due the libellants for their damages in this action the sum of twenty-nine hundred and twenty-four & $\frac{20}{100}$ dollars; and

four days having elapsed since the presentation of said report for confirmation, and no exceptions thereto having been filed—

On motion of David Lyon, proctor for the libellants,

It is ordered and decreed that the report be in all things confirmed, and that the libellants recover in this action against The Propeller "Mary J. Vaughan" and Steamboat "Telegraph" the amount
236 reported due, together with their costs to be taxed, which costs have been taxed at the sum of three hundred and twenty-two $\frac{84}{100}$ dollars; and to that end the said The Propeller Mary J. Vaughan, her tackle, &c., and the said Steamboat "Telegraph," her tackle, &c., be condemned therefor.

And on like motion it is further ordered that out of the proceeds of the stipulations herein for costs and value of the said propeller "Mary J. Vaughn" and steamboat "Telegraph," when the same shall be paid into the registry of the court, the clerk of this court pay to the libellants or their proctor the amount reported due, together with their taxed costs.

And on like motion of Daniel Lyon, proctor for libellants, it is further ordered, that unless an appeal be taken to this decree within the time limited and prescribed by the rules & practice of this court, that after deducting the taxed costs of the officers of this court, the said clerk distribute the proceeds in satisfaction of this decree.

SAMUEL BLATCHFORD.

237 (Endorsed:) 18—483. U. S. district court. John Gordon and others vs. The Propeller Mary J. Vaughan & Steamboat "Telegraph." Final decree on confirmation of commissioner's report. David Lyon, proctor for libellants. Filed Feb'y 21st, 1868.

238 Dist. court of the U. S., south'n dist. of N. Y.

JOHN GORDON & ALS.
v.
THE PROPELLER MARY J. VAUGHAN & St'boat Telegraph.

Please take notice that the libellants appeal to the circuit court of the United States for the southern dist. of New York, at the next term thereof, from the final decree entered in this action on the 21st day of Feb'y, 1868.

Dated Feb'y 26th, 1868.

Yours, &c.,

DAVID LYON,
P'r for Lib'lnts, Appellants.

To GEO. F. BETTS, Esq.,
Cl'k of Dist. Court.
C. VAN SANTVOORD, Esq.,
P'r for Cl'm't of Propeller Vaughan.
F. J. FITHIAN, Esq.,
Proctor f'r Cl't of St'boat Telegraph.

(Endorsed:) 18—483. Dist. court of the United States, south. dist. of N. Y. John Gordon & others ag'st The Propeller M. J.
239 Vaughan, St'boat Telegraph. Notice of appeal. D. Lyon, p'r for lib'l'ts.

240 U. S. dist. court south'n dist. of New York.

THE PROPELLER MARY J. VAUGHAN, HER tackle, &c., Thomas T. Vaughan, cl'm't, impleaded with The St'boat Telegraph, her tackle, &c.,
ads.
JOHN GORDON, JAMES BRUCE, & MICHAEL J. McAuliffe.

Take notice that Thomas T. Vaughan, claimant of the propeller Mary J. Vaughan, above-named, hereby appeals to the next circuit court of the United States for the southern dist. of New York, in the 2d circuit, from the whole and every part of the decree of the district court for said southern dist., made and entered in this cause the 21st day of Feb'y, 1868, so far as the same is in favor of the libellants, and against the Vaughan.

Dated N. Y., Feb'y 29th, 1868.

Yours, &c.,

C. VAN SANTVOORD,
P'r for Cla'm't of the Mary J. Vaughan.

To GEO. F. BETTS, Esq., *Clerk*, &
D. LYON, Esq., *Lib'l'nts' Proctor.*

241 (Endorsed:) 18—483. U. S. dist. court S. D. of N. Y. The Propeller Mary J. Vaughan & Tho's T. Vaughan, claim't, impl'd, &c., ads., John Gordon & others. Notice of appeal of cl'm't of the Mary J. Vaughan. C. Van Santvoord, p'r for c'l't of the Mary J. Vaughan. Filed M'ch 2, 1868.

Due service of a notice of appeal, of which the within is a copy, is hereby admitted.

Dated M'ch 2, 1868.

D. LYON, *P'r for Libellants.*

242 District court of the U. S., south'n dist. of New York.

JOHN GORDON & ALS.
v.
THE PROPELLER MARY J. VAUGHAN & St'boat Telegraph.

SIR: Please take notice that the claimant of the steamboat Telegraph intends to appeal from the final decree of the court in this cause.

Dated March 2d, 1868.

Yours, &c.,

F. J. FITHIAN,
P'r for Cl'm't of Telegraph, Appellant.

To DAVID LYON, Esq.,
P'r for Libellants.
GEO. F. BETTS, Esq., *Clerk.*

(Endorsed:) 18—483. U. S. dist. court, south'n dist. N. Y. John Gordon & al. ag'st The Propeller Vaughan & St'boat Telegraph.
243 Notice of appeal. F. J. Fithian, proctor for cl'm't of Telegraph. To David Lyon, esq., p'r for lib'l'nt. Geo. F. Betts, esq., clerk. Filed M'ch 6, 1868.

244 Circuit court of the United States of America for the southern district of New York, in the second circuit.

JOHN GORDON, JAMES BRUCE, & MICHAEL J. McAuliffe, lib'l'nt & app'l'nts,
vs.
THE PROPELLER MARY J. VAUGHAN, THOMAS T. Vaughan, cl'm't, & The Steamboat Telegraph, Frederic A. Potts, cl'm't, appellees.
} Bond for costs.

Know all men by these presents that we, John Gordon, James Bruce, & Michael J. McAuliffe, Alfred Ogden, & Alexander Hamilton, jr., are held and firmly bound unto the above-named claimants & appellees in the sum of two hundred & fifty dollars, to be paid to the said appellees, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the sixth day of March, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas the above-named libellants have prosecuted an appeal to the circuit court of the United States for the southern dist. of New York, in the 2d circuit, to modify the decree rendered in the above-entitled suit by the judge of the district court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that, if the above-named libellants shall prosecute their appeal to effect and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

GORDON, BRUCE & McAULIFFE, [L. S.]
By JAMES BRUCE.
ALFRED OGDEN. [L. S.]
ALEX. HAMILTON, JR. [L. S.]

Sealed and delivered, and taken and acknowledged, this 6th day of M'ch, 1868, before me.

J. BUCHANAN HENRY,
U. S. Commissioner South. Dist. of N. Y.

245 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Alfred Ogden & Alexander Hamilton, jr., being duly sworn, each depose and say that he resides in the south. dist. of N. Y., and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

ALFRED OGDEN.
ALEX. HAMILTON, JR.

Sworn to this sixth day of M'ch, A. D. 1868, before me.

J. BUCHANAN HENRY,
U. S. Com. S. D. N. Y.

(Indorsed:) Filed this 7 day of M'ch, 1868.

246 Circuit court of the United States, second circuit, southern district of New York.

JOHN GORDON, JAMES BRUCE, & MICHAEL J. McAULIFF
ag'st
THE PROPELLER MARY J. VAUGHAN, THO'S T. Vaughan, claimants, and The Steamboat Telegraph, Frederick A. Potts, cl't, appelle's.

To the honorable the circuit court of the United States of America for the southern district of New York:

The appeal of the above-named appellants respectfully shows: That, on or about the fourteenth day of November, 1864, the above-named libellants John Gordon, James Bruce, and Michael J. McAuliff, exhibited their libel in the district court of the United States for the southern district of New York, against the said Propeller Mary J. Vaughan, her tackle, &c., and said Steamboat Telegraph, her tackle, &c., jointly and severally, claiming over fifty dollars, and praying among other things that the said propeller and said steamboat, together with their several tackle, &c., might be condemned and sold to pay the demands of
247 the said libellants in said libel mentioned, which libel was afterwards amended, all of which in reference to said libel may more fully appear.

That process, issued out of the said court, having been served upon the said propeller and the said steamboat, and the said propeller and the said steamboat having been attached by the marshal in pursuance thereof, the above-named appellee, Thomas T. Vaughan, filed his claim to said propeller Mary J. Vaughan, and on or about the 6th day of December, 1864, filed his exceptions to the said libel; that the above-named appellee, Frederick A. Potts, filed his claim to the said steamboat Telegraph, and on or about the 27th day of December, 1864, filed his exceptions to said libel.

That said exceptions came on to be heard before the Hon. Samuel R. Betts, judge of the said district court, on or about the thirteenth day of January, 1865, and argument having been thereon had, & the said judge having advised thereon, on the 23d day of February, in the year 1865, made a decree in said cause, disallowing said exceptions.

That, on or about the thirtieth day of March, 1865, the said
248 appellee, Thomas T. Vaughan, claimant of the said propeller Mary J. Vaughan, filed his answer to the said libel, in the said district court, praying that said court would pronounce against the said libel against the said propeller Mary J. Vaughan, her tackle, &c., with his costs in that behalf, as by reference to said answer may more fully appear; and that on or about the first day of April, 1865, the said appellee, Frederick A. Potts, claimant of the said steamboat Telegraph, filed his answer to the said libel, in the said district court, praying that the same might be dismissed with costs, as by reference to said answer may more fully appear.

That the same cause came on to be heard before the Honorable Charles L. Benedict, judge of the district court, on or about the 28th day of March, 1866, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties, and the said judge having advised thereon, made, on the 13th day of July, 1866, a decree or sentence in said cause, whereby it was among other

things sentenced & decreed that the said libellants recover against the said propeller & said steamboat the damages by them sustained
249 by reason of the collision, set forth in the pleadings, & whereby it was ordered that it be referred to a commissioner of the same district court, to ascertain and compute the amount of such damages, as by reference to said decree may more fully appear, under which decree a reference was had to George F. Betts, esq., who reported that there was due to the said libellants the sum of five thousand nine hundred & eighty dollars and sixty-one cents ($5,980 61.)

That on the twenty-second day of May, 1867, the said libellants filed their exceptions to said report, and that the claimants of said propeller and said steamboat having also filed their exceptions thereto, argument was had thereon, and a decree was made by the Honorable Samuel Blatchford, district judge, on the fourth day of February, 1868, whereby it was referred each to the said commission, to ascertain the amount of said damages according to the principles laid down in said decree, as by reference to the same may more fully appear; and that in pursuance thereof said commissioner reported due to the libellants the sum of twenty-nine hundred and twenty-five dollars & twenty cents
250 ($2,924 20,) and that a final decree was entered on said report on the twenty-first day of February, 1868.

And these appellants are advised and insist that the said interlocutory decree, filed February 4, 1868, and the said final decree are erroneous, inasmuch as the same do not grant to the libellants the relief prayed for in their aforesaid libel.

And these appellants, for these and other reasons, appeal from the said decree to the next circuit court to be holden in the said district, as on the said appeal they intend to have said cause heard anew in the said circuit court, on the pleadings & proofs in the district court; and they pray that the record and proceedings may be returned to the said circuit court, and that the said decree of the said district court may be so modified by the said circuit court as to grant to the said appellants the relief prayed for in their said libel, or that such other decree be made thereon as to the court shall seem just, and that the appellants their costs and damages in the premises.

Dated New York, March 7, 1868.

DAVID LYON,
Proctor for Libellants & Appellants.

251 (Endorsed:) 18—483. Circuit court of the United States, second circuit, southern district of New York. John Gordon & others, libellants & appellants, against The Propeller Mary J. Vaughan & others, appellees. Petetion of appeal. David Lyon, proctor for libellants, appellants.

Due service of a copy of within petition is hereby admitted.

C. VAN SANTVOORD.
F. J. FITHIAN.

Filed March 9, 1868.

252 Circuit court of the United States of America for the southern district of New York, in the second circuit.

JOHN GORDON, JAMES BRUCE, & MICHAEL J. McAuliffe, lib'l'nts, appellees,
vs.
THE PROPELLER MARY J. VAUGHAN, HER tackle, &c., impleaded with The Steamboat Telegraph, her tackle, &c., Thomas J. Vaughan, cl'm't, app'l'nt.
} Bond for costs.

Know all men by these presents that we, Levi J. Mabie & Charles J. Stephens, are held and firmly bound unto the above-named libellants and appellees in the sum of six thousand five hundred dollars, to be paid to the said libellants, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the 11th day of M'ch, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas the above-named claimant hath prosecuted an appeal to the circuit court of the United States for the southern dist. of New York, in the 2d circuit, to reverse the decree rendered in the above-entitled suit by the judge of the district court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named claimant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

LEVI J. MABIE. [L. S.]
CHA'S J. STEPHENS. [L. S.]

Sealed and delivered, and taken and acknowledged this 11th day of M'ch, 1868, before me.

JNO. A. OSBORN,
U. S. Com'r.

253 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Levi J. Mabie & Cha's J. Stephens being duly sworn, each depose and say that he resides in the southern dist. of New York, to wit, Mabie in Tarrytown, & Stephens in the city of New York; that he is worth the sum of six thousand five hundred dollars over and above all his just debts and liabilities.

LEVI J. MABIE.
CHA'S J. STEPHENS.

Sworn to this 11th day of M'ch, A. D. 1868, before me.

JOHN A. OSBORN,
U. S. Com.

(Indorsed:) Filed this 11th day of M'ch, 1868.

254 Circuit court of the United States for the southern district of New York.

THE PROPELLER MARY J. VAUGHAN, HER tackle, &c., Thomas T. Vaughan, claimant, impl'd with The Steamboat Telegraph, her tackle, &c.,
vs.
JOHN GORDON, JAMES BRUCE, & MICHAEL J. McAuliff, libellants.

To the honorable the circuit court of the United States for the southern district of New York:

The petetion and appeal of Thomas T. Vaughan, claimant of the propeller Mary J. Vaughan above-named, showeth: That, on or about the fourteenth day of November, 1864, the above-named libellants filed their libel in the district court of the United States for the southern district of New York against The Propeller Mary J. Vaughan, her tackle, apparel and other furniture, and The Steamboat Telegraph, her tackle, apparel and other furniture, and all persons lawfully intervening for their interests in said propeller, or said steamboat, in a cause of collision, civil and maritime, in which libel it is alleged, and praying as therein contained, to which said libel the petitioner refers for its contents;
255 that thereafter, on or about the 30th day of March, 1865, the claimant of said propeller Mary J. Vaughan, above-named, having executed the necessary for costs and value, did file his claim and answer, alleging and insisting as therein contained, & praying as therein, and which for the contents thereof the above appellant asks leave to refer. That thereafter the said cause came on to be tried and to be heard before the Honorable Charles L. Benedict, sitting as judge of said district court, on the 28th day of March, & on the 20, 23, & 24 days of April, 1866, upon the allegations and proof adduced by the respective parties; and said judge having advised thereon, on or about the 3rd day of July, 1866, made a decretal order or sentence bearing that date, that the libellants recover in said action against The Propeller Mary J. Vaughan, her engine, tackle, &c., and The Steamboat Telegraph, her engine, tackle, &c., the damages by them sustained by reason of the collision on the pleadings mentioned, with costs to be taxed, & that it be referred to a commissioner of said court to ascertain and compute the amount of such damages, and to report thereon to that court as by reference to said decretal order will appear; that after proceeding
256 with such reference before Geo. F. Betts, esq., one of said commissioners, he made his report to said court bearing date the 14th day of May, 1867, to which report exceptions were taken by the said libellants, and by this appellant; and thereafter, after argument on said exceptions, a decree was made, bearing date Feb'y 4, 1868, overruling said exceptions on the part of the libellants, and allowing certain of said exceptions on the part of this appellant, and referring the cause back to the commissioner, who, thereafter, made his second report to said court, bearing date the 11th day of February, 1868; and thereafter, no exceptions having been taken to said report, a final decree was made, bearing date the 21st day of February, 1868, confirming said report, and for the recovery by said libellants against The Propeller Mary J. Vaughan and The Steamboat Telegraph of the sum of two thousand nine hundred & twenty-four $\frac{20}{100}$ dollars, the amount reported due on & by said last-mentioned report, besides their costs taxed at three hundred

& twenty-two $\frac{84}{100}$ dollars, making in all the sum of three thousand two hundred & forty-seven $\frac{04}{100}$ dollars, as will more fully appear by
257 reference to said decree, to which reference it had for its contents; and this appellant is advised and insists that said decree is erroneous, inasmuch as the said libel should have been dismissed as against the said Propeller Mary J. Vaughan, her tackle, &c., with costs, and for that if said libellants were entitled to a decree for any damages as against The Propeller Mary J. Vaughan, &c., damages have been, which should not have been, adjudged against her.

And this appellant, for these and other reasons, appeals from the whole of the said decree to the next circuit court to be held in said district. (And on the appeal he intends to seek a new decision on the facts, on the pleadings and proofs in the district court, and other proofs to be produced in the circuit court, and to pray different relief.) And he prays that the said decree, and every part thereof, may be reversed as to The Propeller Mary J. Vaughan, her tackle, &c., with costs, or such other decree thereupon made as to the said circuit court shall seem just, and the said appelle's be condemned to pay to this appellant his costs & damages in the premises.

258 And this appellant will ever pray, &c.

Dated New York, M'ch 11, 1868.

C. VAN SANTVOORD,
Proctor & Advocate for Tho's T. Vaughan, Cl'm't of the Mary J. Vaughan.

I admit due service of a copy of the foregoing petetion & appeal this 11th day of March, 1868.

DAVID LYON,
Proctor for Lib't.

(Endorsed:) 18—483. Circuit court of the U. S. for the southern district of N. Y. The Propeller Mary J. Vaughan, her tackle, &c., Tho's T. Vaughan, claim'ts, imp'd, vs. John Gordon & others. Petetion of appeal. C. Van Santvoord, proctor for Tho's T. Vaughan, cl'm't. Filed M'ch 11, 1868.

259 Circuit court of the United States of America for the southern district of New York, in the second circuit.

JOHN GORDON, JAMES BRUCE, & MICHAEL J. McAuliffe, lib'l'nts, appellees,
vs.
THE ST'BOAT TELEGRAPH, HER TACKLE, &C., IMpleaded with The Propeller Mary J. Vaughan, her tackle, &c., F. A. Potts, cl'm't & appellant.
} Bond for costs.

Know all men by these presents that we, Frederic A. Potts & W'm R. Potts are held and firmly bound unto the above-named libellants & appellees in the sum of six thousand five hundred dollars, to be paid to the said libellants, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the 16th day of M'ch, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas the above-named claimant hath prosecuted an appeal to the

circuit court of the United States for the south'n dist. of New York, in the 2d circuit, to reverse the decree rendered in the above-entitled suit, by the judge of the district court of the United States, for the south'n district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named claimant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

F. A. POTTS. [L. S.]
W'M ROCKHILL POTTS. [L. S.]

Sealed and delivered, and taken and acknowledged, this 16 day of M'ch, 1868, before me.

GEO. F. BETTS, *U. S. Com.*

260 UNITED STATES OF AMERICA,
Southern District of New York, ss:

W'm R. Potts, being duly sworn, depose and says that he reside s in the south. dist. of New York; that he is worth the sum of six thousand five hundred dollars, over and above all his just debts and liabilities.

W'M ROCKHILL POTTS.

Sworn to this 16th day of M'ch, A. D. 1868, before me.

GEO. F. BETTS, *U. S. Com.*

(Indorsed:) Vol. —, page —. U. S. circuit court. John Gordon vs. The St'b't Telegraph, &c. Bond for costs on . proctor. Filed this 16th day of M'ch, 1868.

261 Circuit court of the United States, second circuit, southern district of New York.

JOHN GORDON, JAMES BRUCE, MICHAEL J. McAuliff, libellants & appellants,
ag'st
THE PROPELLER MARY J. VAUGHAN, THO'S T. Vaughan, claimant, & The Steamboat Telegraph, Frederick A. Potts, claimant, claimants & appellants.

To the honorable the circuit court of the United States for the southern district of New York:

The appeal of the above-named claimant & appellant Frederick A. Potts respectfully showeth: That he is the claimant, & was owner of the above-named steamboat Telegraph; that, on or about the 14th day of November, 1864, the above-named libellant John Gordon, James Bruce, & Michael J. McAuliff exhibited their libel in the district court of th e United States for the southern district of New York against the above-named propeller Mary J. Vaughan, her tackle, &c., together with the sai d steamboat Telegraph, her tackle, &c., claiming over fifty dollars,
262 & praying, among other things, for the reasons set forth in the said libel, that the said propeller & said steamboat, together with their several tackle, &c., might be condemned to pay the demands of sai d libellants in said libel mentioned, which libel was afterwards amended; that process was duly issued out of said court, and said propeller & said

steamboat were attached by the marshal and taken in custody; that this appellant Frederick A. Potts, claimant of the said steamboat Telegraph, on or about the 27th day of December, 1864, filed his exceptions to said libel.

That said exceptions came on to be heard before Hon. Samuel R. Betts, judge of said district court, on or about the 13th day of January, 1865, and said judge, on the 23rd day of February, 1865, made a *decre* in said cause, disallowing said exceptions.

That thereafter, and on or about the 1st day of April, 1865, this appellant filed his seperate answer to said libel in the said district court, praying that the same might be dismissed with costs in that behalf, as by reference to the said libel will more fully express.

263 That the said came on to be heard before the Honorable Charles L. Benedict, judge of said district court, on or about the 28th day of March, 1866, upon the depositions & proofs taken in said cause, and the testimony & proofs advanced by the respective parties, and the said judge having advised thereon, on the 13th day of July, 1866, made a decree or sentence in said cause, whereby it was, among other things, sentenced & decreed that the said libellants recover against the said propeller & said steamboat the damages by them sustained by reason of the collision in said libel mentioned with costs, as by said decree will more fully appear; under which said decree a reference was had to George F. Betts, esq., who reported that there was due to said libellants the sum of $5,980 61.

That, on the 27th day of May, 1867, this appellant filed his exceptions to said report, & that the libellants & the claimants of said propeller having also filed their exceptions to said report, argument was had thereon, & a decree was made by the Honorable Samuel Blatchford, judge of said district court, on the 4th day of February, 1868, whereby it was referred back to said referee to ascertain the amount of said damages, according to the principles laid down in said decree, as

264 by reference thereto will more fully appear; & that in pursuance thereof, said referee or commissioner reported due to the libellants the sum of $2,924 20, & that a final decree was entered in said report on the 21st day of February, 1868.

And this appellant, Frederick A. Potts, claimant & owner of said steamboat Telegraph, is advised & insists that the said decrees are erroneous, inasmuch as the said libellants were not entitled to recover or have any damages of or from or against the said steamboat Telegraph by reason of the collision in said libel set forth.

And this appellant, for these and other reasons, appeals from so much of the said decree or decrees as condemns the said steamboat Telegraph to pay the whole or any portion of such damages or costs, to the next circuit court to be held in the said district; and on the said appeal he intends to have said cause heard anew in the circuit court, on the pleadings & proofs in the district court, & other proofs to be introduced in the said circuit court; and he prays that the said decree, or so much thereof as condemns the said steamboat Telegraph to pay any part of said

265 damages and costs, may be reversed with costs, or such other decree be made thereon as to said court shall seem just, & that the said libellants be condemned to pay to this appellant his costs and damages in the premises. And he prays that the record & proceedings may be returned to the said circuit court.

Dated March 12, 1868.

F. J. FITHIAN,
Proctor for Appellant Potts.

SOUTHERN DISTRICT OF NEW YORK, *ss*:

Frank H. Angiers, of the city of New York, clerk, being duly sworn, says that, on the twelfth day of March, 1868, he served a copy of the foregoing appeal on David Lyon, esq., the proctor of the libellants and appellants, by leaving the same in his office, with the person in charge thereof.

FRANK H. ANGIER.

Sworn March 13, 1868, before me.

ROBERT OWEN,
Notary Public, New Y'rk.

266 (Endorsed:) Filed M'ch 16, 1868. 18—483. Circuit court of the United States, southern district of New York. John Gordon & al., libell'ts & appell't, ag'nst The Propeller Mary J. Vaughan, &c., & The Steamboat Telegraph, &c., claimants & appellants. Petition of appeal. F. J. Frethian, proctor for appell'ts Potts.

Due service of a copy of within petition admitted, M'ch 12, 1868.

DAVID LYON,
37 *Wall St., N.Y.*

C. VAN SANTVOORD.

Filed March 16, 1868.

267 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Friday, the 19th day of June, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Samuel Nelson, associate justice of the Supreme Court of the United States.

JOHN GORDON & ALS., LIB'L'TS & APP'L'TS,
vs.
THE PROPELLER MARY C. VAUGHAN, &c.,
The St'boat Telegraph, &c., F. A. Potts,
cl'm'ts & appell'nts.

The appeal in this cause coming on to be heard, Mr. D. Lyons read testimony from the apostles, and is heard on part of lib'l'ts & app'l'ts.

Mr. C. Van Santvoord read testimony from the apostles, and is heard on part of cl'm'ts of the M. C. Vaughan.

Mr. F. J. Fithian read testimony from the apostles, and is heard on part of cl'm'ts of st. Telegraph.

268

269 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Friday, the 2d day of October, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

JOHN GORDON & OTHERS
vs.
THE PROPELLER MARY VAUGHAN & ST'B'T Telegraph.

This cause having come on for a hearing & argument before the court, and counsel for the respective parties having been heard, and due deliberation having been thereon had, it is now ordered, adjudged, and decreed, that a re-argument be had, at the coming term of the court, as to the rule adopted by the court in the estimate of the damages of the libellant.

S. NELSON.

270

271 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held in the United States court-rooms, in the city of New York, on Friday, the 27th day of November, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

JOHN GORDON ET AL.
vs.
THE PROPELLER MARY J. VAUGHAN & Steamboat Telegraph, &c.

The re-argument of the above case, on appeal from the court below, coming on to be heard—

Mr. Samuel E. Lyon argues on the part of the libellants.

Mr. Van Santvoord argues on the part of the propeller M. J. Vaughan,

Mr. Fithian argues on the part of the steamboat Telegraph.

Mr. S. E. Lyon argues on part of libellants.

272 *Rate of damages.*

JOHN GORDON & AL.
vs.
THE PROPELLER MARY J. VAUGHAN AND Steamboat Telegraph.

NELSON, C. J.

This libel was filed to recover damages for the loss of a quantity of barley, shipped from Canada to New York, by a collision on the Hudson River. We have heretofore held the owners chargeable for the loss, on account of carelessness and mismanagement in the navigation of their vessels, but reserved the question of damages for reargument. The property was purchased at St. Timothy's, Canada, in October, 1864, which cost, in gold, seventy-two cents a bushel, Canada currency. The court below allowed as damages this sum per bushel, in American currency, and refused to convert the price into an equivalent to the currency in Canada. At the time of the purchase of the barley, and also of its loss, $1 *dollar* in Canada currency was equivalent to $2 16

273 American. So much of our currency, or rather at such rate in it, the purchasers had to pay per bushel; in other words, it cost

them $2 16 to buy $1 of this currency, preparatory to the purchase of the barley. It is argued that the rate of damages in cases of loss by collision, is the value of the article at the port of shipment, at the time of the loss, and not the port of destination, and that the court was right in taking the Canada valuation. But we think it erred in refusing to the libellants full indemnity for the loss. This, as is apparent, required the conversion of the American currency, on which the decree was to be rendered, into an equivalent for the Canadian gold. The damages, as allowed, fell short of a moiety of the loss; and this, founded on a false technicality, namely, that an American dollar was equal to a dollar in gold, Canadian currency, although it was proved, in point of fact, to be otherwise.

The established rule in all this class of cases is, to give such
274 damages as will afford full indemnity against the wrong doer, to the aggrieved party. And we are not satisfied that any insuperable difficulty exists, or that any illegality will be committed, in the present case, in following out this rule.

The principle which should govern it was applied by Judge Hall, in the case of the Griffin, (V. Law Register,) which was affirmed in the circuit. According to this rule the libellants are entitled to the value of the barley in Canada currency at the time of the loss, together with the freight, as it was also paid in this currency. The counsel can adjust the amount, for which a decree be entered; if not, it is referred to clerk.

Decree as to damages reversed, and decree as above.

275 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Saturday, the 2d day of October, in the year of our Lord one thousand eight hundred and sixty-nine:

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

JOHN GORDON & OTHERS
vs.
THE PROPELLER MARY J. VAUGHAN & STEAMboat Telegraph.

This cause having been heard on reargument by the advocates of the respective parties, upon appeal from the district court, in the estimate of the damages of the libellants, and due deliberation having been had in the premises, and the decision of the court having been made and filed with the clerk of this court, on the 7th day of August, 1869, and the counsel not having adjusted the amount for which a decree be entered, on motion of David Lyon, proctor for libellants, appellants, it is ordered that it be referred to Kenneth G. White, esq., clerk of this
276 court, to adjust the amount for which a decree be entered, in accordance with the directions of said decision.

S. NELSON.

277 U. S. circuit court.

JOHN GORDON & AL.
vs.
THE "VAUGHAN" AND "TELEGRAPH."

Reference under decree, dated Oct. 2nd, 1869.

OCT. 21, 1869.—Present, Mr. Lyon for the libellant, and Mr. Van Santvoord & Mr. Fithian for the claimants.

It is admitted by the counsel for claimants that one dollar in Canadian currency was exactly equal to an American gold dollar, coinage of the U. S., and at the date of the shipment, Oct. 7, 1864; and that at the date of the shipment, a dollar in gold was equal to 198—204 in currency, at the New York gold exchange.

It is admitted that the price of gold on the 26th of Oct., 1864, the date of collision, was 212—217; on the 27th, that it was 214—216.

278 Adjourned to the 27th inst., at 10 a. m.

OCTOBER 27TH, 1869.—Present, counsel for respective parties. Adjourned to November 3rd, at 10 a. m.

NOV'R 3RD.—Adjourned to November 10th, at 10½ a. m.

NOV'R 10TH, 1869.—Adjourned to Nov'r 16th, at 10½ a. m.

NOV'R 16TH, 1869.—Adjourned to Nov'r 23rd, at 10½ a. m.

NOV'R 23RD, 1869.—Adjourned to Nov'r 26th, at 10½ a. m.

NOV'R 26TH, 1869.—Adjourned to Nov'r 30th, at 11 a. m.

NOV'R 30TH, 1869.—Adjourned to Dec. 7th, at 12 m.

DEC. 7TH, 1869.—Adjourned to Dec. 14th, at 11 a. m.

279 DECEMBER 14, 1869.—Present, counsel for respective parties.

LUCIUS J. N. STARK sworn on part of claimants.

In 1864 I was agent of the Northern Transportation Line between Montreal and New York, in New York. I knew C. Copeland, of Montreal; he was shipping-agent there. He procured freights for boats in Montreal, and advanced money to the captains to pay charges, when required; that is, towage and expenses. This advance was an advance on the freight, and not on the goods. The bills of lading were sent to me, and I collected the freight, & refunded Mr. Copeland his advances. The amount of his advance was noted in the bills of lading sent to me. I received from Copeland a bill of lading in Oct., 1864, of the boat R. M. Adams, now shown me, signed by C. Copeland, for S. Lewis, the capt. of the boat. There is a note of advances on the bill amounting to "$125 in gold, (on a'c of freight,) payable to Northern Transportation Line,

280 and 2½ % commission on freight." I was the Northern Transportation Line, and I was to collect the whole freight from the consignee on the delivery of the property to him, and to take out from it the $125 in gold and the 2½ % commission, and pay that to Copeland, and pay the balance, if any there was, after paying other charges, to the capt. I collected the whole amount of freight on this bill of lading from Gordon, Bruce & McAuliffe, and paid out of it the $125 in gold, and the 2½ % commission to Copeland. I also received another bill of lading at same time of boat Sherman Lewis, now shown me, signed by C. Copeland for Mandred Lewis. This bill of lading is identical in character with the other, & has the same endorsement as to advances and freight. (The exhibits are marked respectively Exhibits A & B, K. G. W.) Gordon, Bruce & McAuliffe paid me no part of the freight

281 on last bill of lading. I did not collect that, because the boat and cargo was lost. No part of Mr. Copeland's advances, so far as I know, were ever collected on this bill of lading. I know that they were not collected by me.

L. J. N. STARK.

Subscribed & sworn to before me this 14th day of Dec. 1869.

KENNETH G. WHITE,
U. S. Com'r.

The fact is admitted that the price of gold from the 1st to the end of 6th Oct., 1864, ranged from 189 to 197.

Claimant's counsel offers to show that at this date the price of gold is as to currency as 100 to 123.

Overruled, and exception by claimants.

282 Shipped, in good order and condition, by O. & J. Lynch, of Beauharnias, in and upon the boat R. M. Adams, whereof Sherman Lewis is master for this present voyage, and now lying in the port of St. Timothy, and bound for Albany or New York, viz: two thousand eight hundred and ninety-four $\frac{37}{48}$ bushels of barley, (forty-eight pounds per bushel,) being marked and numbered as per margin; and are to be delivered in the like good order and well conditioned at the aforesaid port of Albany or New York, (the act of God, the Queen's enemies, fire, and all and every the dangers and accidents of the seas and navigation of whatsoever nature and kind excepted,) unto the order of O. & J. Lynch or to their assigns, he or they paying freight for said goods, at eight cents per bushel to Albany, or nine cents per bushel to New York, in gold, with average accustomed.

2,894 37-48 bushels of barley. No half lighterage to be charged. O. & J. Lynch.

Paid one hundred and twenty-five dollars in gold on account of freight, payable to Northern Transportation Line, and 2½ % commission on freight.

In witness whereof the master or purser of said boat hath affirmed to *these* bills lading, all of this tenor and date, one of which being accomplished, the rest to stand void.

Dated St. Timothy, this seventh day of October, 1864.

C. COPELAND,
For LEWIS.

283 (Indorsed:) R. M. Adams, Oct. '64. 154 $\frac{34}{48}$ bush. short, $269 80. Claimant's Exhibit A, K. G. W.

284 Shipped, in good order and condition, by O. & J. Lynch, of Beauharnias, in and upon the boat Sherman Lewis, whereof Mandred Lewis is master for this present voyage, and now lying in the port of St. Timothy, and bound for Albany or New York, viz:

3,684 3-48 bushels of barley. No half lighterage to be charged. O. & J. Lynch.

Paid one hundred and twenty-five dollars in gold on account of freight, to be paid to Northern Transportation Line, and 2½% comm'r on freight.

Three thousand six hundred and eighty-four $\frac{3}{48}$ bushels of barley, (forty-eight pounds per bushel,) being marked and numbered as per margin; and are to be delivered in the like good order and well conditioned, at the aforesaid port of Albany or New York, (the act of God, the Queen's enemies, fire, and all and every the dangers and accidents of the seas and navigation of whatsoever nature and kind excepted,) unto the order of O. & J. Lynch, or to their assigns, he or they paying freight for said goods at eight cents per bushel to Albany, or nine cents per bushel to New York, in gold with average accustomed.

W. V. $331 56 in gold.

In witness whereof, the master or purser of said hath affirmed to bills of lading, all of this tenor and date; one of which being accomplished, the rest to stand void.

Dated at St. Timothy, this seventh day of October, 1864.

C. COPELAND,
For MANDRID LEWIS.

(Indorsed:) Boat Shearman Lewis. Claimants' Exhibit B., K. G. W.

285 Circuit court of the United States for the southern district of New York.

JOHN GORDON ET ALS.
vs.
THE PROPELLER MARY J. VAUGHAN, &c., AND The Steamboat Telegraph, &c.

In pursuance of a decretal order made in the above-entitled cause on the 2d day of October, in the year of our Lord one thousand eight hundred and sixty-nine, by which it was referred to the undersigned, one of the commissioners of this court, to adjust the amount due the libellants, in accordance with the decision of this court in said order referred to, in currency, and to report thereon to this court:

I, Kenneth G. White, the commissioner to whom the matter was referred, do report that I have been attended by the proctors for the libellants and for the claimants, and have taken and examined the testimony offered by the respective parties, and do find that the value of the barley lost was, at the time and place of its shipment, Oct. 7, 1864, at St. Timothy, Canada East, 70 cents (in gold) per bushel of 48 pounds, and that the value of the 3,480 bushels of barley, lost at that time
286 and place, at 70 cents (in gold) was $2,436 00; that a dollar in gold ranged from $1 98 to $2 04 in legal tender currency on Oct. 7, 1864, the date of the shipments; and that the value of said 3,480 bushels of barley at $2 01 was $4,896 36

Interest from Oct. 7, 1864, to date of this report at 6°|₀, 5 years 4 mo's 17 days $1,581 47

Making in the total the sum of..... $6,477 83 to the libellants.

Dated the 24th day of February, A. D. 1870.

All which is respectfully submitted.

KENNETH G. WHITE,
U. S. Commissioner.

D. LYON, *Proctor for Lib'ts.*

(Endorsed:) U. S. circuit court, S. D. of New York. John Gordon et al. vs. The Propeller Mary J. Vaughan, &c., and The Steamboat Telegraph, &c. Commissioner's report. Filed M'ch 1st, 1870.

287 U. S. circuit court.

THE PROPELLER MARY J. VAUGHAN, HER tackle, &c., impleaded with The Steamboat Telegraph,
ads.
JOHN GORDON & OTHERS, LIBELLANTS.

Exceptions of the claimants of the Vaughan to the report of the commissioner herein dated the 24th day of February, 1870.

First exception. For that said commissioner, in computing the amount due the libellants, has converting the value in gold, at the time and place of shipment, Oct. 7, 1864, at St. Timothy's, Canada East, of the barley lost, into legal tender currency, instead of converting the same into gold of the coinage of the United States, and adding the interest in gold.

288 Second exception. For that in adjusting the amount due the libellants, said commissioner has reported an amount as due the

libellants which exceeds the amount of the value of the barley at the time and place of shipment, in gold of the coinage of the United States with the interest in gold, and payable in gold.

Dated New York, Feb'y 24, 1870.

C. VAN SANTVOORD,
Proctor for Cla'm'ts of the Vaughan.

(Endorsed:) The Propeller Mary J. Vaughan, her tackle, &c., impleaded with The Steamboat Telegraph ads. John Gordon & als. Exceptions to comm'r's report, dated Feb. 24, 1870. C. Van Santvoord, proctor for cl't of the Vaughan. Filed M'ch 1, 1870.

289 U. S. circuit court.

THE STEAMBOAT TELEGRAPH, HER TACKLE, &c., impleaded with The Propeller Mary J. Vaughan,
ads.
JOHN GORDON & OTHER, LIBELLANTS.

Exceptions of the claimants of the Telegraph to the report of the commissioners herein, dated the 24th day of February, 1870.

First exception. For that said commissioner in computing the amount due the libellants has converted the value in gold at the time and place of shipment, Oct. 7, 1864, at St. Timothy's, Canada East, of the barley lost, into legal tender currency, instead of converting the same into gold of the coinage of the United States, and adding the interest in gold.

Second exception. For that in adjusting the amount due the libellants, said commissioners has reported an amount as due the libellants which exceeds the amount of the value of the barley at the time and place of shipment, in gold of the coinage of the United States with the interest in gold, and payable in gold.

Dated New York, Feb'y 26, 1870.

F. J. FITHIAN,
Proctor for Steamboat Telegraph.

290 (Endorsed:) U. S. circuit court. The Steamboat Telegraph, her tackle, &c., impleaded with The Propeller Mary J. Vaughan, ads. John Gordon & others. Exceptions to commissioner's report. Dated Feb'y 24, 1870. Filed March 2, 1870.

291 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Saturday, the twenty-sixth day of March, in the year of our Lord one thousand eight hundred and seventy:

Present, the Honorable Samuel Nelson, associate justice of the Supreme Court of the U. S.

JOHN GORDON, JAMES BRUCE, & MICHAEL J. McAuliff, libellants & appellants,
vs.
THE PROPELLER "MARY J. VAUGHAN," HER tackle, &c., and The Steamboat "Telegraph," her tackle, &c., claimants & appellants.

This cause having been heard on the pleadings and proofs on the

respective appeals of John Gordon, James Bruce, and Michael J. McAuliff, libellants; of Thomas Vaughan, claimant and owner of the propeller Mary J. Vaughan, and Frederick A. Potts, claimant and owner of the steamboat Telegraph, from the final decree of the district court of the United States for the southern district of New York, and having been argued by the advocates of the respective parties, and due deliberation having been therein had, and the decision of the court having been filed August 7th, 1869, affirming the decree of the said district court in all things except as to the amount of damages due the libellants, and reversing the same in that particular; and a de-
292 cretal order having been made in this cause on the 2nd day of October, 1869, referring it to Kenneth G. White, esq., clerk of this court, to adjust the amount due the libellants in currency, in accordance with said decision, and to report thereon to this court, and the said commissioner having made and filed his report in pursuance of said order, which report is dated February 24th, 1870, whereby it appears that the amount due the libellants in currency, as adjusted by him, was, at the date of said report, the sum of six thousand four hundred and seven-seven $\frac{83}{100}$ dollars, and exceptions to the said report having been filed by the claimants of the said propeller Mary J. Vaughan, and also by the claimants of the said steamboat Telegraph, and the said exceptions having been duly considered—

It is ordered, adjudged, and decreed by this court that the said exceptions of the said claimants filed to said report, and each and all of them, be, and the same hereby are, disallowed, and the said report be, and the same hereby is, in all things confirmed; that said decree of the district court be affirmed as against The Propeller Mary J. Vaughan, her engine, tackle, apparel, and furniture, and against The Steamboat Telegraph, her engine, tackle, apparel, and furniture, as jointly and severally liable for the damages arising from the collision in the pleadings mentioned.

And it is further ordered, adjudged, and decreed that the libel-
293 lants, John Gordon, James Bruce, and Michael J. McAuliff recover against the said Propeller Mary J. Vaughan, her engine, tackle, apparel, and furniture, or her said claimant, and against the said Steamboat Telegraph, her engine, tackle, apparel, and furniture, or her claimant aforesaid, the sum of six thousand four hundred and seventy-seven $\frac{83}{100}$ dollars, the amount of their damages by reason of said collision, as adjusted by the report of the said clerk, together with the sum of thirty-seven $\frac{78}{100}$ dollars interest on said sum of $6,477 83 from the 24th day of February, 1870, the date of said report, to the entry of this decree, and three hundred and twenty-two $\frac{84}{100}$ dollars, the costs of said libellants in said district court, as the same have been taxed therein, in all amounting to the sum of sixty-eight hundred and thirty-eight $\frac{45}{100}$ dollars.

And it is further ordered, adjudged, and decreed that the said libellants recover of said claimants the costs of said libellants on said appeal to this court to be taxed, amounting to three hundred and thirty $\frac{19}{100}$ dollars, and making in the aggregate the sum of seven
294 thousand one hundred and sixty-eight $\frac{64}{100}$ dollars, and that judgment be entered against the claimants, and in favor of the libellants therefor.

(Signed) S. NELSON.

295 Circuit court of the United States for the southern district of New York.

THE STEAMBOAT "TELEGRAPH," HER TACKLE, &c., Frederic A. Potts, claimant & appellant, impleaded with The Propeller "Mary J. Vaughan," her tackle, &c.,
ads.
JOHN GORDON, JAMES BRUCE, AND MICHAEL J. McAuliffe, libellants & appellees.

Take notice that Frederic A. Potts, claimant of the steamboat Telegraph above named, hereby appeals to the Supreme Court of the United States from the whole and every part of the decree entered on the above-entitled cause with the clerk of this court on the 31st March, 1870, bearing date the 26th day of March, 1870, so far as the same affirms the decree of the district court as against The Telegraph, and so far as said decree of this court reverses the said decree of the district court as to the amount of damages, and so far as the same affects The Telegraph, or her claimant, and also as to the principle of the assessment of damages by converting the value of the barley lost into currency, and to the award of damages.

New York, March , 1870.

Yours, &c.,

296 F. J. FITHIAN,
Proctor for Cl'ts of the Telegraph, Appellant.

To K. G. WHITE, Esq., *Clerk.*
DAVID LYON, Esq.,
Proctor for Lib't & Appellees.

(Endorsed:)

Circuit court United States. The Steamboat Telegraph, her tackle, &c., Frederick A. Potts, claimant, impleaded, &c., ads. John Gordon & others. Notice of appeal. F. J. Fithian, proctor for claimant.
Filed April 12, 1870.

We admit due service of within notice April 8, 1870.
DAVID LYON,
Proctor for Libellants.
C. VAN SANTVOORD,
Proctor for Cl'm'ng the Vaughan.

297 Supreme Court of the United States.

THE STEAMBOAT TELEGRAPH, HER TACKLE, apparel, &c., Frederic A. Potts, claimant & appellant, impleaded with The Propeller Mary J. Vaughan, her tackle, &c., respondents,
ads.
JOHN GORDON, JAMES BRUCE, AND MICHAEL J. McAuliffe, libellants and appellees.

To the honorable the Supreme Court of the United States:

The petition and appeal of Frederic A. Potts, claimant and appellant, respectfully showeth:

That on or about the 14th day of November, 1864, the above-named

libellants filed their libel in the district court of the United States for the southern district of New York against The Propeller Mary J. Vaughan, her tackle, apparel, and furniture, and The Steamboat Telegraph, her tackle, apparel, and furniture, and all persons lawfully intervening for their interests in said propeller or said steam-
298 boat, in a cause of collision, civil and maritime, in which libel it is alleged and praying as therein contained, to which said libel the petitioner refers for its contents; that thereafter, on or about the 1st day of April, 1865, the claimant of said steamer Telegraph above named, having executed the necessary stipulations for costs and value, did file his said claim and answer, alleging and insisting as therein contained, and praying as therein contained, and which, for the contents thereof, the above appellant asks leave to refer; and such proceedings were had in said cause that, on the 21st day of February, 1868, a final decree was made and pronounced therein by the said district court, wherein it was in substance adjudged that the said libellants recover against The Propeller Mary J. Vaughan and The Steamer Telegraph the sum of two thousand nine hundred and twenty-four $\frac{20}{100}$ dollars, besides their costs, taxed at three hundred and twenty-two $\frac{84}{100}$ dollars; and that, after such final decree, appeals were taken therefrom to the circuit court of the United States for the southern district of New York by said libellants and by the claimants, respectively, of said Vaughan and Telegraph, and the said cause was removed thereby to the said cir-
299 cuit court, and such proceedings were had in the said circuit court that, on or about the 2nd day of October, 1869, a decretal order was made in said cause, referring it to the clerk of the said circuit court to adjust the amount in currency, for which a decree should be entered in conformity to the decision of the circuit judge as to amount of damages.

That thereafter the said clerk made his report, dated 24th day of February, 1870, to which your petitioner, the claimants of the Telegraph, filed exceptions, dated the 26th February, 1870.

That thereafter, on or about the 31st day of March, 1870, a final decree was entered, bearing date the 26th day of March, 1870, whereby said exception to said report was disallowed and the said report was confirmed, thereby confirming the decree of said district court as against The Propeller Mary J. Vaughan, her engine, &c., and against The Steamboat Telegraph, her engine, &c., as jointly and severally liable for the collision in the pleadings mentioned; and further ordering and adjudging that the libellants recover against the said Propeller Mary J.
300 Vaughan, her engines, &c., or her said claimant, and against said Steamboat Telegraph, her engines, &c., or her claimant, the sum of $6,477 83, the amount of their damage by reason of said collision, as adjusted by the report of the said clerk, together with the sum of $37 78, interest on the said sum of $6,477 83 on the 24th day of February, 1870, the date of said report, to the entry of said decree, and $322 84, the costs of said libellant in said district court, in all amounting to the sum of 6,838 45; and thereby further ordering and adjudging that the said libellant recover of said claimant the costs of said libellant in said appeal to this court, amounting in the aggregate to $7,168 64.

And the appellant is advised and insists that said libel should have been dismissed with costs as to the appellant, the claimant of the Telegraph, and for that if said libellants were entitled to a decree for any damages, damages have been allowed which should not have been allowed.

Wherefore the appellant appeals from said decree of said circuit court, so far as it effects the said decree of said district court as to the said steamboat Telegraph, or adjudges said steamboat or this claimant to be liable for any damages for or by reason of the collision aforesaid;
301 and also for as much as it reverses the amount of damages; and as to the principle of the assessment of damages by converting the value of the barley lost at the place of shipment in specie or gold, into currency, instead of converting the same into money of the coinage of the United States, and to the award of damages in said decree, to the Supreme Court of the United States, and respectfully pray that the said decree of the said circuit court, and the libel, answer, deposited and proceedings at the said court may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court may be reviewed, and a decree made dismissing said libel with cost as to the Telegraph, or such other decree made as to the said Supreme Court shall seem just. And your petitioner will ever pray, &c.

Dated New York, April 7, 1870.

F. A. POTTS.

F. J. FITHIAN,
Proctor & Advocate.

302 (Endorsed:) Supreme Court of the United States. The Steamboat Telegraph, her tackle, &c., Frederic A. Potts, claimant & appellant, impleaded with The Propeller Mary J. Vaughan, her tackle, &c., respondents, ads. John Gordon, James Bruce, & Michael J. McAuliff, libellants & appellees. Filed Ap'l 12, 1870. Petition of appeal.

We admit due service of a copy of within petition.
April 11, 1870.

DAVID LYON,
Proctor for Libel'ts & App'lees.
C. VAN SANTVOORD,
Proctor for Cl't of the Vaughan.

303 Circuit court of the United States of America for the southern district of New York, in the second circuit.

THE STEAMBOAT TELEGRAPH, HER TACKLE, &c., Frederick A. Potts, claim't & appellants, impleaded, &c., *ads.* JOHN GORDON, JAMES BRUCE, MICHAEL McAuliffe, lib'ts & appellees. } Bond for costs.

Know all men by these presents that we, Frederick A. Potts, & George H. Potts, & George T. M. Davis, are held and firmly bound unto the above-named John Gordon & als, lib'ts & appellees, in the sum of fifteen thousand dollars, to be paid to the said libellants & appellees, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the 7th day of April, in the year of our Lord one thousand eight hundred and seventy.

Whereas the above-named Frederick A. Potts, cl'nts & appell'ts have prosecuted an appeal to the Supreme Court of the United States, to re-

verse the decree rendered in the above-entitled suit, by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named cl'm't & appellant shall prosecute his appeal to effect, and answer all damages and costs, if they fail to make the said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

F. A. POTTS. [L. S.]
GEORGE H. POTTS. [L. S.]
GEO. T. M. DAVIS. [L. S.]

Sealed and delivered, and taken and acknowledged, as to F. A. Potts & George H. Potts, this 7 day of April, 1870, before me.

JOHN A. SHIELDS,
U. S. Commissioner.

S. D. OF N. Y.

Taken & ackno'led'd as to Geo. T. M. Davis, before me, this 11th day of April, 1870.

JOHN A. SHIELDS,
U. S. Commissioner.

304 UNITED STATES OF AMERICA,
Southern District of New York, ss:

George H. Potts, being duly sworn, does depose and say, that he resides 319 East 17 , in the city of New York; that he is worth the sum of fifteen thousand dollars, over and above all his just debts and liabilities.

GEO. H. POTTS. [L. S.]

Sworn to this 7th day of April, A. D. 1870, before me.

JOHN A. SHIELDS,
U. S. Com.

SOUTH'N DIST. OF NEW YORK, *ss:*

George T. M. Davis, being duly sworn, deposes and says that he resides 317 East 17 st., in the city of New York, and that he is worth the sum of fifteen thousand dollars, over & above all his just debts & liabilities.

GEO. T. M. DAVIS.

Sworn to this 11th day of April, A. D. 1870, before me.

JOHN A. SHIELDS,
U. S. Commissioner.

(Indorsed:) Filed this 11th day of April, 1870.

L. B. WOODRUFF.
Circuit Judge.

305 By the Honorable L. B. Woodruff, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit, to John Gordon, James Bruce, and Michael J. McAuliff:

Whereas Frederic A. Potts, claimant of the steamboat "Telegraph," her tackle, &c., has lately appealed to the Supreme Court of the United States, from the whole and every part of a decree lately rendered in the circuit court of the United States for the southern district of New York, in your favor, against The Steamboat "Telegraph," her tackle, &c., and

her claimant, and The Propeller "Mary J. Vaughan," her tackle, &c., and her claimant, so far as the same affirms the decree of the district court as against The Telegraph, and as stated and alleged in the notice and petition of appeal of said claimant of the Telegraph, and as filed the security required by law:

You are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern
306 district of New York, in the second circuit, the fifth day of April, in the year of our Lord one thousand eight hundred and seventy.

L. B. WOODRUFF,
Circuit Judge.

(Endorsed:) Supreme Court of the United States. The Steamboat Telegraph, her tackle, &c., Frederick A. Potts, cl'm't & appellant, impleaded with The Propeller Mary J. Vaughan, her tackle, &c., resp'd'ts, ads. John Gordon, James Bruce, & Michael McAuliff, lib'l'ts & app'lees. Citation.

We admit due service of a copy of within citation.
April 11, 1870.

DAVID LYON,
Proctor for Lib'ts & App'lees.
C. VAN SANTVOORD,
Proctor for Cl't of the Vaughan.

Filed Ap'l 12, 1870.

307 Circuit court of the United States for the southern district of New York.

THE PROPELLER MARY J. VAUGHAN, HER tackle, &c., Thomas T. Vaughan, cl'mt & appellant, impl'd with The Steamboat Telegraph, her tackle, &c.,
ads.
JOHN GORDON, JAMES BRUCE, AND MICHAEL J. McAuliff, libellant & appellees.

Take notice that Thomas T. Vaughan, claimant of the propeller Mary J. Vaughan, above-named, hereby appeals to the Supreme Court of the United States, from the whole and every part of the decree entered in the above-entitled cause with the clerk of this court, on the 31st March, 1870, bearing date the 26th day of March, 1870, so far as the same affirms the decree of the district court against the Vaughan, and so far as said decree of this court reverses the said decree of the district court as to the amount of damages, and so far as the same affects the Vaughan, or her claimant; and also as to the principle of the assessment of damages by converting the value of the barley lost into currency, and to the award of damages.

308 Yours, &c.,

C. VAN SANTVOORD,
Proctor for Cl't of the Vaughan, Appellant.

NEW YORK, *March 31st*, 1870.

To K. G. WHITE, Esq., *Clerk.*
DAVID LYON, Esq.,
Proctor for Lib'ts & Appellees.

(Endorsed:) U. S. Circuit court S. D. of New York. The Propeller Mary J. Vaughan, her tackle, &c., impl'd with The Steamboat Telegraph, her tackle, &c., ads. John Gordon and als. Notice of appeal to U. S. Supreme Court. C. Van Santvoord, proctor for clm't of the "Vaughan." Filed April 5, 1870.

309 Supreme Court of the United States.

THE PROPELLER MARY J. VAUGHAN, HER tackle, &c., Thomas T. Vaughan, claimant, & appellant, impl'd with The Steamboat Telegraph, her tackle, &c.
ads.
JOHN GORDON, JAMES BRUCE, AND MICHAEL J. McAuliff, libellants and appellees.

To the honorable the Supreme Court of the United States:

The petition and appeal of Thomas T. Vaughan, claimant and appellant, respectfully showeth:

That, on or about the 14th day of November, 1864, the above-named libellants filed their libel in the district court of the United States for the southern district of New York, against The Propeller Mary J. Vaughan, her tackle, apparel, and furniture, and The Steamboat Telegraph, her tackle, apparel, and furniture, and all persons lawfully intervening for their interest in said propeller, or said steamboat, in a cause of collision, civil and maritime, in which libel it is alleged, and praying as therein contained, to which said libel the petitioner refers for
310 its contents; that thereafter, on or about the 30th day of March, 1865, the claimant of said propeller Mary J. Vaughan, above-named, having executed the necessary stipulation for costs and value, did file his said claim and answer, alleging and insisting as therein contained, and praying as therein contained, and to which for the contents thereof the above appellant asks leave to refer; and such proceedings were had in said cause that on the 21st day of February, 1868, a final decree was made and pronounced therein by the said district court, wherein it was in substance adjudged that the said libellants recover against The Propeller Mary J. Vaughan & The Steamboat Telegraph, of the sum of two thousand nine hundred & twenty-four $\frac{20}{100}$ dollars; besides their costs, taxed at three hundred & twenty-two $\frac{84}{100}$ dollars; and that after such final decree appeals were taken therefrom to the circuit court of the United States for the southern district of New York, by said libellants and by the claimants respectively of said Vaughan & Telegraph, and the said cause was removed thereby to the said circuit court, and such proceedings were had in the said circuit court that on or about the second day of October, 1869, a decretal order was
311 made in said cause referring it to the clerk of the said circuit court to adjust the amount in currency for which a decree should be entered, in conformity to the decision of the circuit judge as to amount of damages; that thereafter the said clerk made his report, dated the twenty-fourth day of February, 1870, to which the cl'ts of The Vaughan filed exceptions dated the twenty-fourth day of February, 1870; that thereafter, on or about the thirty-first day of March, 1870, a final decree was entered, bearing date the twenty-sixth day of March, 1870, whereby said exceptions to said report were disallowed, and the said report was confirmed thereby also affirming the decree of said district court as against The Propeller Mary J. Vaughan, her engine, &c., and against The Steamboat Telegraph, her engines, &c., as jointly and severally

liable for the collision in the pleadings mentioned, and further ordering and adjudging that the libellants recover against the said Propeller Mary J. Vaughan, her engine, &c., or her said claimant, and against said Steamboat Telegraph, her engine, &c., or her claimant, the sum of six thousand four hundred and seventy-seven $\frac{83}{100}$ dollars, the amount of their damage by reason of said collision, as adjusted by the report of the said clerk, together with the sum of thirty-seven $\frac{78}{100}$ dollars
312 interest on said sum of six thousand four hundred and seventy-seven $\frac{83}{100}$ dollars, on the 24th day of February, 1870, the date of said report, to the entry of said decree, and three hundred and twenty-two $\frac{84}{100}$ dollars, the costs of said libellants in said district court; in all amounting to the sum of six thousand eight hundred and thirty-eight $\frac{45}{100}$ dollars, and thereby further ordering and adjudging that the said libellants recover of said claimants the cost of said libellants on said appeal to this court, amounting to 330 $\frac{19}{100}$ dollars, and making in the aggregate the sum of seven thousand one hundred and sixty-eight $\frac{64}{100}$ dollars.

And this appellant is advised and insists that said decree is erroneous, inasmuch as said libel should have been dismissed, with costs, as to this appellant, the claimant of the Vaughan, and for that if said libellants were entitled to a decree for any damages, damages have been allowed which should not have been allowed.

Wherefore this appellant appeals from said decree of said circuit court, so far as it affirms the said decree of said district court as to the said Propeller Vaughan or adjudges said propeller or this claimant to
313 be liable for damages from the collision aforesaid; and also for so much as it reverses the decree of the district court as to the amount of damage; and as to the principle of the assessment of damages, by converting the value of the barley lost at the place of shipment in specie or gold into currency, instead of converting the same into money of the coinage of the United States, and to the award of damages in said decree, to the Supreme Court of the United States, and respectfully prays that the said decree of said circuit court and the libel, answer, depositions, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court may be reversed, and a decree made dismissing said libel, with costs, as to the Vaughan, or such other decree made as to the said Supreme Court shall seem just.

And your petitioners will ever pray, &c.

Dated New York, April 4th, 1870.

C. VAN SANTVOORD,
Proctor for Cl't of the Vaughan and Appellant.

314 (Endorsed:)

Supreme Court of the United States. The Propeller Mary J. Vaughan, her tackle, &c., Thomas T. Vaughan, claimant and appellant, imp'l'd with The Steamboat Telegraph, her tackle, &c., ads., John Gordon, James Bruce, and Michael J. McAuliff, libellants & appellees. Petition of appeal. C. Van Santvoord, proctor for cl'ts of the Vaughan, & app'l't.

I admit due service of a copy of the within petition and appeal, this 4th day of April, 1870.

DAVID LYON,
Proc. for Lib'ts & Appellees.
F. J. FITHIAN, *Pro.*

Filed April 5, 1870.

315 Circuit court of the United States of America for the southern district of New York, in the second circuit.

THE PROPELLER MARY J. VAUGHAN, HER tackle, &c., Thomas T. Vaughan, claimant & appellant, impl'd with The Steamboat Telegraph, her tackle, &c.,
vs.
JOHN GORDON, JAMES BRUCE, & MICHAEL J. McAuliff, libellants & appellee.

Bond for damages & costs.

Know all men by these presents that we, Levi J. Mabie & Cyrus J. Murray, are held and firmly bound unto the above-named libellant & appellees in the sum of ten thousand dollars *dollars*, to be paid to the said libellant & appellees, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the fifth day of April, in the year of our Lord one thousand eight hundred and seventy.

Whereas the above-named Thomas T. Vaughan, cla'nt, has prosecuted his appeal to the Supreme Court of the United States *for the southern district of New York*, to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York, so far as it concerns the Vaughan or her claimant:

Now, therefore, the condition of this obligation is such that, if the above-named claimant & appellant shall prosecute such appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

LEVI J. MABIE. [L. S.]
CYRUS J. MURRAY. [L. S.]

Sealed and delivered, and taken and acknowledged, this 5 day of April, 1870, before me.

R. E. STILWELL,
U. S. Com.

316 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Levi J. Mabie & Cyrus J. Murray, being duly sworn, each for himself deposes and says that he is worth the sum of ten thousand dollars, over and above all his just debts and liabilities.

LEVI J. MABIE.
CYRUS J. MURRAY.

Sworn to this 5th day of April, A. D. 1870, before me.

R. E. STILWELL,
U. S. Com.

Bond approved as to form & sufficiency this 5th day of April, 1870.

L. B. WOODRUFF,
Circuit Judge.

(Indorsed:) Vol. —, page —. U. S. circuit court. The Propeller Mary J. Vaughan, her tackle, &c., Thomas T. Vaughan, cl'm't & app'l't,

implead. with the St'b't Telegraph, &c., vs. John Gordon & others, lib'ts & appellees. Bond for damages & costs on appeal to U. S. Supreme Court. C. Van Santvoord, pr. for cl't of the Vaughan. Filed this 5 day of April, 1870.

317 By the Honorable L. B. Woodruff, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit, to John Gordon, James Bruce, and Michael J. McAuliff:

Whereas Thomas T. Vaughan, claimant of the propeller Mary J. Vaughan, her tackle, &c., has lately appealed to the Supreme Court of the United States from the whole and every part of a decree lately rendered in the circuit court of the United States for the southern district of New York, in your favor, against the said Propeller Mary J. Vaughan, her tackle, &c., and her claimant, and The Steamboat Telegraph, her tackle, &c., and her claimant, so far as the same affirms the decree of the district court as against the Vaughan, and as stated and alleged in the notice and petition of appeal of said claimant of the Vaughan, and has filed the security required by law: You are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the fifth day of April, in
318 the year of our Lord one thousand eight hundred and seventy.

L. B. WOODRUFF,
Circuit Judge.

(Endorsed:)

U. S. Supreme Court. The Propeller Mary J. Vaughan, her tackle, &c., Thomas T. Vaughan, cl'm't & app'l't, impl'd with The Steamboat Telegraph, her tackle, &c., ads. John Gordon & others, libellants & appellees. Citation. C. Van Santvoord, proctor for cl't of the Vaughan, appellant.

We admit service of the within citation.
N. Y., Ap'l 5, 1870.

DAVID LYON,
Proctor for Libellants.
F. J. FITHIAN,
Proctor for Telegraph.

Filed Ap'l 5, 1870.

(Indorsement on cover:) No. 282. The Steamboat "Telegraph," her tackle, &c., Frederick A. Potts, claimant, appellant, vs. John Gordon, James Bruce, and Michael J. McAuliffe. And No. 283. The Propeller "Mary J. Vaughan," her tackle, &c., Thomas J. Vaughan, claimant, appellant, vs. John Gordon, James Bruce, and Michael J. McAuliffe. S. New York C. C. U. S.
Filed 7th November, 1870.

9 Wall 5.45
16 Down 2.72
45 Bark 6.18
5 Wall Sure
on Oregon
20 Cal 3.50
7 Wall Bullis 2 Shorts
Not a contract

47

2 Ours

R. M. STOVER, LAW PRINTER,
42 & 44 Nassau Street, New York.

In the Court

Supreme Court United States.

THE STEAMBOAT *Telegraph*, her tackle, &c.,
FREDERIC A. POTTS, *Claimant*,
vs.
JOHN GORODN, and others.

Points on behalf of Claimant of Telegraph.

FACTS NOT DISPUTED.

1st. That on Tuesday the 25th day of October, 1864, about 11 o'clock in the forenoon, the Steam Propeller, *Mary J. Vaughn*, Captain Rufus Brayton, Master, left the City of Troy, for a voyage to New York, on the Hudson River, having in tow two canal boats laden with cargoes of grain (barley) in the hold under deck, and with deckloads of hoop poles above deck. That the canal boats were lashed one on each side of the steamer. The canal boat *R. M. Adams*, Captain *Sherman Lewis*, Master, was fastened to the *Starboard* of the *Vaughn*, and the canal boat *Sherman Lewis*, Captain Mendard Lewis, Master, being fastened on the starboard or port side of the steamboat, *Vaughn*. These boats were fastened by towing

lines to the "Propellor." The bows of the two *canal boats* projected beyond or forward of the bow of the "Propellor," from five to twelve feet.

See Testimony of Rufus Brayton, Record fol. 101, *page* 39.

The bows of the canal boats were fastened together by a rope across in front of the propellor's bow. The propellor *Vaughn*, was about sixty tons burden; ninety feet in length by seventeen wide, with pilot house, fire rooms kitchen, engine-room, and dining-room on deck. The deck of the *Vaughn*, was about two and a-half feet above water, and with bulwarks twenty inches above deck. The floor of the pilot house was four "steps" (say feet) above the deck.

See Eidence of Brayton, Record, fols. 79, 101, *pages* 29, 39.)

2*d.* That the steamboat *Telegraph*, (F. A. Potts, Claimant) left her dock at the city of New York about five o'clock in the afternoon of the same day (October 25,) on a voyage up the Hudson River to Newburgh and other points, having in tow three large heavy freight barges, viz., the barge *Minisink* lashed on the larboard or "port" side. The barge *Dutchess* on the starboard side. And the barge *Insurance* lashed astern, and in tow of the starboard barge *Dutchess*.

3d. That on the morning of the 26th October, somewhere between 2 and 4 A. M. Just below "Butter Hill" the *Vaughn* and her tow coming down the river, met the *Telegraph* and her barges going up. And the barge *Minisink* on the larboard or port side of the *Telegraph*, and the canal boat *Sherman Lewis* on the larboard or port side of the *Vaughn*, came in collision,

The stem of the canal boat striking the barge on the bend of her larboard bow, whereby the canal boat *Lewis* was torn from her fastenings to her tow, swung around cross-wise of the river and across the bows of the *Telegraph* and barges, and was so much injured that she shortly after filled and sunk.

4th. That it was a bright starlight night, no wind and almost the last of the ebb tide of that night.

POINTS.

First.

In behalf of the *Telegraph* it is claimed that the burden of proof is upon the libellants to show fault on the part of the *Telegraph* or the libel must be dismissed as to her. It is not enough to show a case of suspicion or doubt merely against us, or that libellants were injured. They must show by clear and satisfactory proof that the injury was sustained in whole or in part from the negligence, fault or unskillfulness of the *Telegraph* or her managers.

1 *Parson's Maritime Law*, 187–192.
The Eliza and Abbey, 1*st Betts' Rep.* 335.
Crosby vs. *Penguin* 21 *Pichr Rep.* 254.
The Tug William Young, 2*d Betts' Rep.* 38–41.
The Steamer Express, 2*d Betts' Rep.* 268.

It is submitted the proofs show the *Telegraph* is not in fault.

1st. She was fully manned and found. There is no question made by any proof on that subject.

2d. She had all the proper and required signal lights in good condition and lighted.

3d. She had an experienced and competent pilot who, although not at the wheel, was on deck in communicating distance with the man at the wheel to give his advice and assistance, and he swears he (if at wheel) could have done nothing other or different than was done.

See evidence of Z. Scutt, pilot, *Record, fol.* 124.

4th. There was a competent man at the wheel. A seaman of 20 years experience on waters about New York.

See evidence of Capt. Chas. Scutt, *Record, p.* 56, *fol.* 139.

5th. The *Telegraph* had competent engineers.

6th. There was at least three "lookouts," two on barge *Minisink* and one on *Telegraph*.

7th. It is conceeded that the *Telegraph* had just passed in safety the Steamer *Erastus Corning* giving and receiving the passing signals, and each passing to the port side of the other.

See evidence of Chas. Scutt, *Record, fol.* 141.

8th. It is conceded that the *Telegraph* first gave the proper signal that she intended to port her helm and go to the right.

See evidence of Chas. Scott, *Record, fol.* 142.
Rufus Braton, *fol.* 92.
Zack. Scutt, *fol.* 122.

9th. The evidence is conclusive, that the *Telegraph* was then heading in a course which would, if the *Vaughn* had heeded and obeyed the *signal*—have carried the *Telegraph* to the eastward or port side of the *Vaughn.* All the *witnesses agree* that when the *Telegraph* blowed her whistle she was heading either directly up the river or east of the course of the river. The great preponderance of testimony shows she was heading up east of the course of the river. *Brayton* (Captain of the *Vaughn*) swears, his first examination, June 9–10, *Record, fol.* 92, the *Telegraph* was a "little to westward of him coming up." Of course, to pass to eastward she would be on a course eastward of the course of river. *Levi Deyo,* (Mate of barge *Dutchiss,*) swears, that when *Telegraph* blew her whistle she was "*heading very near a north east course.*" *Deyo's Evidence, Record fol.* 116.) Zach Scutt swears, (*See Evidence, Record, fol.* 122,) that *Telegraph* was heading "on the starboard bow up the river, rather *northeast.*" Captain Charles Scutt of the *Telegraph,* swears, that when he blew his whistle he was "*in the*

middle of the river heading northeast." (*See his Evidence Papers, fol.* 142.)

These are all the witnesses who spoke from knowledge as to how the *Telegraph* was heading at the time she blew her one whistle, and they all agree that she was heading in a course up the river direct, or *east* of up the river. This evidence then shows conclusively that, by the way the *Telegraph* was then heading when she gave the *signal*, if the *Vaughn* had *heeded and obeyed the signal.* She would have cleared us, and the *Telegraph* would have passed to *eastward* even if she had not ported her helm at all. Indeed, Pat Cary, steersman of the *Vaughn*, swears this is so, (*See his 1st Evidence, Book, fol.* 82.) But the *Telegraph* did not rely upon this, for on giving her signal she did at once port her helm so far, as that if the vessels had been coming "head and head" would have carried the two vessels clear to the port side of each other, whether the *Vaughn* had ported or not.

10th. The testimony clearly shows that on discovering that the *Vaughn* was not responding to the signal to keep to the westward, the *Telegraph* then put her helm hard aport, heading to the eastward as far as possible, so that continuing on that course would have carried her on to the eastern shore of the river.

See evidence of Chas. Scutt, Zach. Scutt, and all the witnesses on the barges in tow of the *Telegraph.*

11th. The evidence further shows that notwith-

standing all the precaution before stated—on discovering that the *Vaughn* was closing in upon her so that there was danger of a collision, the *Telegraph* reversed her engines, stopped, and was not under headway at the time of the collision.

Mandred Lewis (witness for the *Vaughn*) swears *Telegraph* had no headway at time of collision. (See his evidence, *Book fols.* 65–70.)

Ralph Smith swears, the *Telegraph* was backing at the time of the collision. (Evidence *fol.* 107.)

Levi Deyo swears he did not think the *Telegraph* had any headway when the boats came together. (See his evidence, *fol.* 117.)

Zach. Scutt swears that at time of the collision the *Telegraph* had a little stern way on her, at all events she was not going ahead and engines were working back. (See his evidence, *fol.* 123.)

Capt. Chas. Scutt swears he don't think the *Telegraph* was going ahead any, at time of the collision. (See his evidence, *fol.* 143.)

Against this body of evidence no one witness testifies to the contrary. But this is not *all.* The circumstances surrounding the case, show that the Telegraph had no headway She was a large powerful boat, and with her heavy barges in tow, any considerable headway would have carried with it a momentum that would have sunk the canal boat on the

spot. The evidence that the canal boat swung with the tide across the bows of the *Telegraph* is very strong evidence to show that the Telegraph was lying stationary and the canal boat was having its own way.

12th. The Telegraph was in her proper position in the river and in her right course. Zack Scutt (pilot) and Chas. Scutt (captain) of the Telegraph swore that when Capt. Chas. Scutt took the helm to let the pilot go below to get his tea, the "Telegraph" was just below *Cold Spring* dock, and west of the middle of the river. To the "best of the westward" (as Zack says), or two thirds of the way across, or "200 yards west of the middle," as Capt. Chas. Scutt says. And all the witnesses with one accord agree that in going *up* with an *ebb* tide against her that was the proper place for the Telegraph to be, in order to keep in the eddy formed by the tide ebbing down and striking "Butter Hill," thence setting across east to the east shore and striking Little Stony Point, and thence setting across again to west shore, and then forming a reflux or eddy tide below *Butter Hill* along the west shore. Capt. Hopkins, of the propeller Pratt, swears that, by the custom of the river, "boats going "up against the tide *have a right to whistle first.*" (See his testimony, fol. 137). And Capt. Brayton, of the "*Vaughn*," also swears that the practice of the river is "*for vessels going* "*against the tide to have the preference, or go* "*either side when she is a mind to when she can* "*keep out of the tide.*" (See his first testimony, Book, fol. 98). And this upon the principle, doubtless, that vessels coming down with the

tide are considered as having the "wind free," and so should give way to the others. Thus it appears that by the *concurrent* evidence of every witness in the case on all sides the "Telegraph" was in her *proper place* and on her proper course at the point of time when she *signaled* the "Vaughn."

13th. Up to this time then there can be no fault or misconduct justly chargeable to the "Tele-"graph." And from this period forward to, and after the collision (with the exception hereafter mentioned), there is no witness who asserts or charges *neglect, misconduct, fault,* or want of skill on the part of the "Telegraph," or those having her in charge. On the contrary, it is agreed not only by the witnesses for the "Telegraph," but by the Capt. of the "Vaughn" himself, that the "Telegraph" was immediately preceeding the collision in her rightful and proper *place*, where, by the usage of the river, she should be and *should be expected to be*. That she was proceeding on the usual and proper course up the river with ample space and channel on both sides for other boats to pass. It is not claimed that there was any fault or omission on the part of the "Telegraph" in her look outs, or in not seeing the "Vaughn" in time. On the contrary, the Captain of the "Vaughn" admits that when the boats were over one-half mile apart "Telegraph" signaled him by her steam signal, informing him that the "Telegraph" had sighted him, and that it was her *desire* and *intention* to keep to the right and pass him to the eastward as it was his proper course to do, and he swears that he answered

the signal acquiescing in that *course*. Now did the "Telegraph" do this? Did she do what her whistle declared was her desire and intention to do? Because if she *did* and then took reasonable precautions as to stopping when she saw danger of a collision (as we have before shown, she did), then she is *absolutely without fault*. Not only no fault proved against her, but she proves herself *affirmatively free from* fault.

Now then comes the only fault charged against the "Telegraph," and amid all this body of evidence the only witness who charges it is the man of all work on the "Vaughn." *Pat Carey*, who undertook the job of steering the "Vaughn" on that single occasion. He swears when he first sighted the "Telegraph" she was about a mile off. He was off "Butter Hill," steering right down the river, and the Telegraph coming right up. (*Evidence fol.* 84.) He was near the centre of river when Telegraph whistled (*Ibid*) and she was a little to westward of him. And Captain Brayton swears that at the time of the collision the Telegraph was almost "*head up the river*." (*Evidence fol.* 93-4.) Carey swears that at time of collision he was heading to the *west shore*, almost *direct across the river*, (see in evidence fol. 85,) having began to port his *helm* at time of *Telegraph's whistle* and continuing so to do till he had changed his course from down the river to almost directly across. Brayton swears to same thing. (1st evidence fol. 93.) Now at this point "Carey and Brayton" undertake to swear that the Telegraph did not port her helm. (Evidence fols.

82-93.) Carey says *if she had ported her helm at the time she whistled, or any time afterwards before the collision, then there would have been no collision and she would have passed to* the eastward. But he goes on further and asserts that if the "Telegraph" *had kept the course she was steering* at the time she whistled she would have passed to the east, thereby asserting that the captain of the Telegraph, a sailor of 20 years experience, and 7 or 8 years constant practice as captain of steamboats in these waters, with his licensed pilot standing by his side, after having seen this propeller coming half a mile off, and having himself taken the initiative and indicated by his whistle his intention to port his helm and keep *away* to the east of the approaching vessel, started out direct the *contrary*, starboarded his helm and turned direct toward the approaching vessel, on a course that would certainly collide with her or pass across her bows to the *westward.*

The proof is *overwhelmingly* against this portion of Carey's and Brayton's evidence. Every witness on board the Telegraph and her barges swear that the Telegraph kept steering to the eastward both before and at the time of the collision. But in addition to all that, the fact is established by evidence that cannot be mistaken or false, and that is the spot where the barge "Minisink" was struck, on her *larboard bow*, showing, to a demonstration, that the force which delivered that blow was moving in a direction east of the course of the river and coming from west of the course of the *river.* Place the "Telegraph" where

you will, either near the west shore, in the middle, or east of the middle of the river. Let him be heading in what direction you will, either directly up the river, as Carey and Brayton swear, or almost easterly across the river, as all the other witnesses swear. *Still* it is physically impossible for the force that delivered that *blow* to have been passing towards west of the course of the river.

And here I desire to call the attention of the Court to the annexed two diagrams, marked "A" and "B," and it is submitted that they *demonstrate* that at the time of collision the "Vaughn" must have been heading *east* of down the river, in order to strike the "Minisink" where she *did*.

Here I might rest the case and respectfully request that the libel be dismissed as to us on the ground not only that there is no proof to show us in fault, but that we have *affirmatorily* proven ourselves free from fault. But we go still further on and show.

Second.

The *Vaughn* was solely in fault for this collision.

It is seldom a case of collision occurs where afterwards so clear a case of incompetence and want of ordinary skill can be shown against either vessel as is shown in this case against the *Vaughn*.

1*st*. She was short handed, Brayton swears that he usualy carried beside himself, one deck hand

two engineers, a man cook and a pilot, and sometimes an extra *hand*. Here he had no *extra hand* and was short the help of his cook, and

2d. He had no pilot which made him short another *hand*. The proof is clear, (*See Brayton's 1st Evidence, Ex. Book, fol.* 97,) that on all *down* trips before, during that season, Brayton had carried a pilot, (examine his evidence as to times when he had pilots.) This itself is the cause of the collision. It is clear, that had there been a competent pilot on board the *Vaughn* this collision would not have occurred "If Brayton, *a part* owner of this boat, took the responsibility of running his vessel with her valuable tows, in the night time, in this difficult navigation, short handed, and without a *pilot*. Then if a collission occurred he ought to be held to the strictest and most *satisfactory* proof that his vessel was managed and handled in all respects as well as she could, or would have been handled had she had a full crew and a competent pilot. In this he utterly fails on his own showing.

3d. The man, "Carey" was totally *incompetent* as a steersman, proved so by his own *evidence* and the evidence of "Thatcher the *Vaughn's* witness. Carey swears, (*1st Evidence, June* 9, *fols.* 83 *to* 84, 88, 23.) that previous to this season his only experience had been as a *hand* on a sailing vessel. And he also swears, (*See his Evidence, fol.* 83,) that on the *Vaughn* he was a man of all work and he never steered except when they had *no* pilot. Now, comparing this with Brayton's evidence showing

that on all previous trips he had pilots, it shows this was the first trip on which "Cary" undertook to act as pilot or steersman.

4th. Brayton was especially incompetent and unacquainted with the river or its proper navigation. This was his first season on the Hudson River. For six years before he had been navigating a canal boat propelled by a horse. (See his cross-examination.)

5th. The second engineer Tom Lloyd, who was on duty was wholly incompetent. All the experience he is shown to have possessed was running a stationary engine in Wilmington, Delaware. (See his evidence, *fol.* 191.) He admits to have wrongly executed an order given him by word of mouth, which he persistently swears he heard and understood. (See his evidence.)

6th. From this incompetence and want of skill came the collision, and the following consequences occurred.

1st. The *Vaughn* was out of her proper and usual place in the river. She was clear over on the east side when she should have been in the center or west of the center. This is demonstrated by the testimony of Capt. William O. Hopkins of the propellor Pratt which met and passed the *Vaughn* just before the *Telegraph.* (See his evidence, *Book p.* 754, *fols.*, 136 *to* 138.) It is clear that the occurrences sworn to by Capt. Hopkins (if they occurred at all) did occur between his boat

and the *Vaughn*. It is conceded by Capt. Brayton that he did meet and pass a propellor with one barge in tow. Just before he met the *Telegraph* and just below Polypus Island, and that he sheared sharp to westward to pass her. Now the *Pratt* was there and just that occurred as to her, and no other propellor is shown to be there. It is clear it was the *Vaughn* to which Capt. Hopkins' evidence applies. This evidence is most important in developing the truth as to how the *Vaughn* was being handled and managed. It is the evidence of a disinterested and wholly unprejudiced witness swearing to acts which he saw and did. And this evidence establishes

2d. That the steersmen of the *Vaughn* did not understand or answer the proper steam signals. Capt. Hopkins seeing the *Vaughn* considerably to the eastward of him exercised his right of election (as he might going up against the tide) and choose to pass to the westward with helm a starboard and accordingly signified his intention so to do by two whistles. This signal was not answered by the *Vaughn*, neither was it obeyed. On the contrary, the *Vaughn's* helm was put hard a port and she headed straight across the bows of the *Pratt*, and but for the most prompt and decided efforts on the part of the *Pratt* in turning quickly to the eastward and stopping her headway (which she probably could not have so soon done had she had the heavy barges of the *Telegraph* in

in tow); this litigation would have been between the *Pratt* and the libellants and not us. Again the same ignorance and misconduct occurred again immediately after on meeting the *Telegraph*. Capt. Scutt, seeing the *Vaughn's* lights slanting to westward from under the bows of the *Pratt* and then turning to the southward again took his election to pass those approaching lights to the right o eastward and gave his signal of one whistle to that effect, which the *Vaughn* admits she heard. Now as before, the *Vaughn* did not answer this signal. The testimony is overwhelming that she did not answer. Of the 17 witnesses sworn, twelve swore she did not and but two swore she did. But if she did answer she did not obey. The steersmen of the *Vaughn* did not change her course to the west of the course of the river, nor keep to straight down the river. He doubtless attempted to do this after it was too late and supposed he had done it, but from his ignorance and want of skill he failed to do it in time or do enough of it, and hence the collision which was unavoidable so far as the *Telegraph* was concerned.

3d. It is clear from the evidence of all the witnesses, that the steersman of the "Vaughn" did not understand the course of the *river* at that point, nor his *own* course, nor the direction of the Telegraph, nor the position of the vessels in the river before or at the time of the collision.

Freightened and *bewildered* by his narrow escape from colliding with the "Pratt," which had just passed him, he went (in sailor's phrase) "yawing" all over the river, utterly without presence of mind or power of management.

4th. The "Vaughn's" engine was not reversed. It did not work back nor was the vessel's headway stopped until she was near being run upon the rocks of the west shore. (See evidences of *Sherman Lewis*, *Butholf*, *Theodore Mandred*, *Lewis*, and all the witnesses for the Telegraph) Doubtless he attempted to do it; very likely he thought he had done it. But like anything else that was attempted on the "Vaughn" that night, it *failed*. With an assistant at the engine as ignorant as the steersman, it was a continuous *blunder and bungle*.

5th. "*Cary*" and "*Brayton*" swear in their *second* examination (they tell no such story in the first evidence) that before the collision the "Vaughn" engine was stopped and then reversed and worked back. That it was working *back* at the time of the collision, and that the "Vaughn" had *no headway*. That directly after the collision the Captain started his boat ahead, but found she was unmanageable by reason of the lines of the canal boat on the starboard side being parted or loosened. That he immediately stopped and lying still until he had hove the fastenings tight. That he then directed the

engineer to "back her back, but the engineer, by mistake, started the engine *ahead.* That immediately on discovering the boat was making a *headway,* Capt. Brayton at once caused the mistake of the engineer to be corrected and the boat backed round. That this mistake occurred fifteen minutes after the collision and during all which time the "Vaughn" had been lying still in the water and had not gone *a length from the* place of *collision.*

Now it is manifest that this whole story of *Cary* and *Brayton* is a fabrication. It is contradicted by every witness on the "Vaughn's" tows and every one on the Telegraph. If it be true *how could* the "Vaughn" get over on the west shore. That she was there is certain, for Thatcher and Lewis swear she was so near that Captain Brayton ordered a "pole to be put out" to see if bottom could be touched. (Book page 68, fol. 170). This is not denied by Brayton, Now the tide was *setting* eastward all this while. How then could the "Vaughn" get to the west shore unless she *floated against the tide.* Again if the "Vaughn" was not going ahead at or after the collision, how did she get *out of sight of the Telegraph?* That the Telegraph's headway was stopped at the point of collision at least, is *manifest* because the canal boat swung round directly *across her bows?* She could not push that canal boat broadside up the river against the tide. How did she get out of sight of the "Vaughn" then if the latter was lying still?

The *truth* is that while these things probably occurred they did not occur at the time, place, or manner as stated by these two interested witnesses.

The fact undoubtedly is that neither Carey or Brayton saw the Telegraph or heard the whistle from her until they were close *upon her*. When having narrowly escaped from under the bows of the *propeller Pratt*, he was paying no attention to anything else and was so confused that he did not know what way he headed. When he straightened to his course after that he thought he was heading down by the *course of the river*, when in *fact* he was heading several points towards the *east* shore, and when he ported his helm and steered four points to westward on first seeing Telegraph, he thereby headed *direct for* the Telegraph.

2d. When finding himself approaching the Telegraph he rang first to slower, then to *stop*. Two bells to *back, and here the mistake of the engineer occured.* Instead of backing he started ahead again. He obeyed the bell to slower, to stop, but *mistook* the bell to back. The collision then immediately occurred. Both Brayton and Carey sprang from the pilot-house in affright, procured a lamp, and rushed forward to see if their vessel was *damaged*, The engine all this while *working ahead*, Brayton supposing it *to be working back.* The boat was then being driven towards the west shore, sheared to the west by the blow. (See Thatcher's *testimony.*) Then Captain

Lewis and Thatcher coming forward saw Brayton coming from the forward part of his boat, and Lewis calls out for "*God's sake stop or you will sink me, you are almost into the mountain.*"

Then and not till then Brayton had his dispute with his engineer, and then and not till then was this propellor's wheel stopped and backed, and then and not till then was their *lines fixed.*

This is sustained by Mandred Lewis, *Sherman Lewis, Bortolph,* and *Thatcher.*

It is confirmed by Brayton himself in his 2d examination and by Carey. (No 8.) Carey says he left the wheel-house 10 seconds *after the blow and went first forward to see if the boat was filling,* and stood there till captain came with a light. (Of course he left the wheel-house before that.) He says he left the wheel in 10 seconds after collision. (Book fol. 175.) The impression on his mind was that his boat was "filling." (See his evidence, fol. 175.) He says the engine was working *back,* but how does he know? He admits he could not see and was not paying the slighest attention to that, but only to see if his boat was not filling.

In his first examination Cary corroborates *this* view and contradicts the statements of his second examination. On his first direct examination he says, he had been backing half a minute to a minute before collision, says

nothing about stopping and backing. On his cross-examination he says:

The collision parted all our lines, "*we go*" "*below the Telegraph, and run in pretty well to* "*the westward before we turned round to come* "*up again.*" (*Book, page* 31 *fol.* 85.) When did he do that? *Not after he had stopped.* if his story is to be believed, for on his second examination, he swears he did *not go ahead at all after the collision*, (*See particularly the close of second examination.* Brayton swears the first thing done after collision was to stop his engine from *backing.* But *how* he did it don't appear whether by bell or *voice*! Carey don't say anything of this, only that Brayton went for a *light.*

Brayton says, when he found his boat all *right* "*he went into the pilot house and started her ahead.*" Carey swears that the Captain "*sung out to go ahead,*" (they don't agree on anything.)

Found the boat unmanageable and then "stopped" as Carey says; "stopped and backed" to bring the canal boat along side as *Brayton* says. Then fixed the *lines* as both say. Then Brayton told the engineer to "back her" as *both say.* But the engineer by mistake worked her *ahead.*

Brayton swears she did not get headway before he discovered the mistake and *instead of ringing his* bell he went to the engineer and ordered him to back.

Brayton swears he could tell by the sound of

her *exhaust pipe whether she was working* back or *forward.* And yet, she made 40 revolutions forward before he *discovered* that she was working ahead, (*See last of his direct and his cross-second examination.*)

Again *Brayton* and *Cary* are neither of them sustained by the engineer *Lloyd.* He says in his first Ex., got one bell to *slow.* Then in about *three minutes* he got one bell *to stop.* Then in about *five minutes* he got *two bells* to back, and he backed her, and then in a couple or three minutes came the collision.

Now, *N. B.*, he says nothing about getting any bell or order to stop working her back.

But that after the collision he went out on deck and assisted in tightening the lines, and then he got an order to work her back. (But she *was* working back according to him, and that he being excited, mistook the order, and worked her *ahead.* He swears positively that he then and now recollects the order was to work her back. Yet, Brayton swears he said, you told me to work her ahead.

Again Brayton, *Pat Carey* and Lloyd are contradicted by Mrs. Brayton, and she swears, she heard a sharp *whistle.* Next, and she could tell *how long* after, she heard bells ring and the engine stop; she knows it *stopped,* for she lay near it, and it could not stop without her hearing it: she lay thinking about getting up (she was restless and could not sleep) when she heard the wheel stop; some minuets after the

wheel stoped. She arose and got partly dressed and then came the crash.

Now, according to her, the engine of the *Vaughn* was standing still and not backing at all at the time of the collision.

Thus, these witnesses contradicted themselves at every step. They are contradicted on every matterial point by the witnesses on their own *boats.* On the *Telegraph,* on her barges, and by one outside *indifferent boat.*

Third.

Now, upon the above facts and circumstances, can there be any doubt that this collision was the sole result of the ignorance, incompetence and mismanagement of the three men in charge of the *Vaughn,* (being the steersman, Brayton the captain, and Lloyd the assistant engineer.) Suppose it had been the *Vaughn* herself that had sustained the damage complained of in this action, and her owners had libeled us to recover the whole or some part of the damage, would the court, upon the evidence hesitate a moment in refusing to charge the *Telegraph* with damage which the *Vaughn* had thus brought upon herself? Neither should we be called upon to contribute to the payment of damage which the *Vaughn* has brought upon others.

Fourth.

The counsel for the libellant, pressed by the *force* of the evidence, and with the frankness characteristic of him is compelled to admit that my positions in respect to the *Vaughn* are correct. He then seeks for *pretexts* to charge the *Telegraph* (as he is interested to do) and surmises a theory of his own, viz.: That the *Telegraph*, intending to go to the *westward* of Palypus Island, *did not* head or go as much to the *eastward* as her captain swears. Of course this is not sustained by the evidence. A glance at the map will show that Palypus Island is in the lower part of Newburgh bay, and the water *there* is a mile and a half or two miles wide, and the island lies way over to the west shore. So that from the point of collision, below Butter Hill, the *Telegraph* could have run a mile on a northeast course and still have ample space to change and go to the west of the *island*. But suppose, for the sake of the argument, that it is true that the *Telegraph* did not head as much to the eastward as Captain Scutt swears, or even did not turn to the eastward any, still this would *not* have produced the *collision*, for (as I have before shown) both *Carey* and *Brayton* swear that if the *Telegraph* had kept the course she was heading when she blew her whistle there would have been no collision. They swear positively that the *Telegraph* must have put her helm to starboard and headed west of the course of the river to produce the collision. On the other hand the counsel for the *Vaughn*, in order to give some plausability to this conduct of Brayton and Carey, is driven *clear out* into the realm of *conjecture*. His theory is that the *Telegraph*, although heading to the west of the course of

the river when she signaled the *Vaughn* still seeing that the *Vaughn* did not apparently heed or obey the signal, but continued on her eastward course in a direction which would take her across the bows of the *Telegraph*, then the latter changed her course to the westward and attempted to pass to the west of the *Vaughn*, bnt seeing that the *Vaughn* had then likewise changed her course to the westward and was coming into her, the captain of the *Telegraph* then did put his helm hard a port and attempt to go to the eastward, but not in time, and hence the collision. This, as I understand, is the counsel's theory. It is directly in the face of the testimony of every witness. It is not sustained by a single fact or circumstance in the case. Yet suppose we admit it to be true, what then? Why, then the counsel is only out of one dilema into another. It is an admission that the *steersman of the Vaughn*, after hearing and understanding and acquiesing in the *Telegraph's* declaration of her purpose to go to the eastward, did himself deliberately persevere in a course easterly, so as to cross the bows of the *Telegraph*, thus compelling her to change her course to westward to avoid the threatened collision. And then when the *Telegraph* had thus changed to the west, the *Vaughn* did the same and went after her again It is virtually to say that the captain of the *Telegraph* ought to have known that the *Vaughn* was in the hands of utterly incompetent and ignorant persons, and that it was his duty therefore to have ran away from her and kept away at all hazzards. Thus it will be seen that both the counsel for the libellants and for the *Vaughn* are compelled to depart from all the testimony, as well as the conceded facts and circumstances of the case to search for pretexts and *conjectures* in order to find

a fault against the *Telegraph*. But the *Court* will not do so. It will determine the matter upon the weight of evidence, holding the libellants to the burthen of proof. And by that measure we feel confident of a decree in favor of the *Telegraph*.

Fifth.

It is submitted that if upon an examination of the evidence given by the *captain*, *steersman* and *engineer* of the *Vaughn* on the one side, and the witnesses on board the *Telegraph* and her barges on the other, there should be found such contradictions as to leave the matter in doubt as to whether *either* or *both* of these vessels were so improperly, negligently and unskillfully handled and managed as to be in *fault* in the premises, then resort should be had to the evidence of the other witnesses in the case not on either of the *vessels*. *Sherman Lewis*, captain and owner of the canal boat *R. M. Adams*, which was on the starboard side of the *Vaughn* (*Record book*, *p.* 63) *Joseph Bartolph*, a passenger and owner of deck cargo on canal boat *Adams*, (*Record book*, *p.* 61-2-3) *Asa Thatcher*, hand on boat *Adams*, (*Record*, *p.* 66-7-8) *Mandred Lewis*, captain of the boat *Sherman Lewis*, (which was sunk, *record*, *p.* 22-3) and Captain *C. Hopton*, commander of the steam propeller *Pratt*, (erronously spelled "Bat" in the *record*) which immediately preceeded the *Telegraph* up the river, and narrowly escaped collision with the *Vaughn*. (*Record book*, *p.* 44.)

Of these witnesses, if they had any *bias* at all, those on board the *Vaughn's* tows, would naturally favor the steamer towing them, rather than the other. While as to the witnesses *Bartolph* and *Hopton*, they must be considered wholly indifferent between the parties, relating truthfully the occurrences they witnessed. And as to these witneses it is confidently asserted that in respect to every act and circumstance showing negligence and want of ordinary and proper skill in the management and navigation of the two colliding steam boats the testimony of these indifferent witnesses *condemns* the *Vaughn* and exculpates the *Telegraph*.

1st. It is manifest that this collision could not have occurred where and under the circumstances it did, without gross ignorance and want of skill, or culpable *negligence*, on the part of one or both the managers of those vessels. And the witnesses last named agree in testifying that each and every of the unskillful and faulty movements which produced the colision occurred on board the "Vaughn." Thus showing (what we have before claimed) that the *primary* cause of this collision was the reckless and unjustifiable attempt of "Brayton," the captain and part owner of the "Vaughn," to make this trip *without a pilot* (which he had never done before), and with himself and the man "Patrick Carey," as steersman, neither of whom had sufficient knowledge or experience of the river to act in that capacity in the *night*.

2d. These witnesses all concur in facts showing conclusively the want of ordinary skill and

care on the part of the "Vaughn's" managers.

1st. Hopton swears that "Carey," steersman of the "Vaughn," was ignorant of his position in the river. He was clear over on the east side, so far that Capt. Hopton, of the propeller "Pratt," thought to pass west and to the left instead of going to "port," and gave a signal to that effect by two whistles which signal was neither answered nor obeyed by the *Vaughn*, on the contrary her helm was put a "port" and the vessel headed *west* and across the course of the "Pratt" directly contrary to the signal, rendering a collision eminent between these two vessels.

2d. All the witnesses on the two canal boats in tow of the "Vaughn," agree in saying that the *Vaughn* gave no *signal* until the instant of the collision, and at that time the *Vaughn* was under such headway that she came near running herself and her remaining tow on the west shore of the river before she could be stopped.

Sixth.

The rule is well settled that where both of two colliding vessels are found to be in fault, the rule is to "divide the loss." In the case of the schooner *Catharine* et al., 17 *Howard*, 170–177, the rule in

such case was carefully considered and settled by this Court: NELSON J. says: "The question, we "believe, has never until now come distinctly be- "fore this Court for discussion. The rule that "prevails in the District and Circuit Courts has "been to '*divide the loss.*' This seems now to be "the well settled rule in the English Admiralty (citing authorities)." And this decision was followed in the case of the "*Grey Eagle*," 9 *Wallace*, 505. In that case this Court having determined that both vessels were in fault ordered "as a conse- "quence that the loss should be *divided between the* "*parties.*"

In this case it was doubtless the intention of the the District Court to adhere to this rule, and to charge each vessel with "half the loss." But instead of that, by inadvertence or otherwise, the decree has been so entered as to charge *each vessel* with the *whole loss.* A joint decree against both for the whole when it should be a severed decree against each for half.

In any event, therefore, the decree should be modified in this respect.

F. J. FITHAN,

Counsel and Proctor for Claimant of the Telegraph.

1. The libellants appealed at fols 246 to 251.
2. The appeal of Thomas T. Vaughan, the claimant of the Mary I. Vaughan, folios 254 to 258.
3. The appeal of Frederick A. Potts, the claimant of the Telegraph, folios 261 to 265.

II.—The case comes before this Court on the separate appeals from the Decree of the Circuit Court of the U. S., for the Southern District of New-York, of Thomas T. Vaughan, the claimant of the Vaughan, (fols. 309 to 311,) and of Frederick A. Potts, the claimant of the Telegraph (fols. 297 to 302).

Pending the appeal to this Court, the claimant, Thomas T. Vaughan has died, and Jane Vaughan and Stephen C. Bull, the administrators on his estate, have been substituted in his place as parties.

III.—The claimants of the Vaughan allege for errors in the proceedings and decree of the Circuit Court:

1. That on the proofs upon the issue raised by the allegation in that behalf, in the second article of the answer of Thomas T. Vaughan, controverting the libellant's title to the barley lost, the libel should have been dismissed for such want of title.

2. By reason of the insufficiency of the libel in particulars specified in exceptions thereto in the District Court, to entitle the libellants to the relief prayed for therein against the Vaughan, the libel should have been and should be dismissed as to her.

3. For that upon the proof of the facts and circumstances of the collision it should have been held and adjudged that the collision alleged in the libel, and the consequent damage and loss, was not caused by any negligence, want of skill, improper conduct, or other fault of the persons in charge of or navigating the Vaughan.

4. For that upon the findings of fact if warranted by the proofs under the pleadings, that the collision in the pleadings mentioned was caused by negligence on the part of both of the vessels proceeded against, the decree should have been for the recovery against the Vaughan or her claimant of only one-half of the damage.

5. In regard to the award of damages the Circuit Court should have affirmed the award by the District Court in its decree (fol. 235) of damages based upon the value of the barley lost at the time and place of its shipment, St. Timothy, Canada East, in specie, or Canada currency on a specie basis; or at the most it should have awarded the damages upon the basis of the valuation of the barley lost at the time and place of its shipment, in the currency prevalent in Canada, in specie or Canada currency on a specie basis, in dollars and cents, equivalent to money of that denomination in gold or in the coinage of the United States, with interest from the date of the shipment, and decreed the payment in gold or in the coinage of the United States of the specie value in Canada, at the time and place of shipment, with the interest.

IV.—In their libel (fol. 2 to 8), the libellants claim title to the barley, in the first article as consignees of the barley laden on board the boat Sherman Lewis, and in course of transportation from Canada to the City of New-York, without saying by or for whose account, or how consigned.

In the second and third articles it is alleged that said canal-boat, Sherman Lewis, with said barley on board, was taken in tow by the propeller Mary I. Vaughan, at Troy, to be towed to the City of New-York, and that said propeller, with said canal-boat lashed alongside, on her port side, left Troy on the morning of Tuesday, Oct. 25, 1864, bound to the City of New-York—the said propeller having only one other canal-boat in tow, lashed on her starboard side.

That said propeller, with said canal-boat laden with said barley, in tow, proceeded on her voyage down the Hudson River towards New-York, and on the morning of Wednesday, the 26th of October, 1864, between 3 and 4 o'clock, said propeller being then between Newberg and Cold Spring, in the Highlands, encountered the steamboat Telegraph, having barge in tow on her port or larboard side, said Te'egraph having another barge on her starboard side with a third barge astern of the second, the said steamboat Telegraph being bound or moving up the river at the time. That the barge in tow of the Telegraph on her port side being wholly propelled, governed and controlled in all respects by the said steamboat Telegraph, her master and crew, came in collision with and struck the said canal-boat Sherman Lewis, near her bow with great force and violence, parting the fasts that held said canal-boat to said propeller, Vaughn, staving in their bow and causing so much damage and injury to said canal-boat that in about 15 minutes she went down in water from 100 to 200 feet deep. That the sinking of

said canal-boat followed so rapidly after the collision that the master and part of the crew had barely time to save their lives by jumping on to the barges, two others saving themselves on a deck load of hoops that floated after the sinking of the canal-boat.

And then, as a statement of the facts upon which the question of fault for the collision is to be adjudged, it is alleged:

That at the place where the collision occurred the Hudson River is nearly one mile wide, and the channel or course straight for several miles sufficiently wide and deep for the said propeller and steamboat with their several tows, to pass each other without collision or damage. That although the collision occurred before daylight, the night was a clear, starlight night and nearly calm, there being only a very light breeze with the moon on her last quarter, an hour or so before set ting.

And as an inference from these facts, in the fourth article it is alleged that said barley was totally lost by the sinking of the canal boat in such deep water near the middle of the river, and the collision and consequent damage and loss to these libellants of about $10,000, was caused by the negligence, want of skill, and improper conduct of the persons navigating the said propeller, Mary I. Vaughan, or by the negligence, want of skill, or improper conduct of the persons navigating the said steamboat Telegraph, or by their joint negligence, fault or improper conduct, and not by or through any fault, negligence or improper conduct of the persons on board the canal-boat Sherman Lewis, her master and crew or of these libellants.

To this libel the claimant of the Vaughan filed exceptions (at fols. 27–28.)

1st Exception. That the statement of facts upon which the libellants rely for relief is not sufficiently full, by reason of the omission of essential particulars, such as the courses of the respective steamers one to that of the other, and the acts of commission or omission, upon which the imputation of fault may be predicated, which are required by the practice in Admiralty to be stated in plain allegations, to apprise the claimant of the ground of fact upon which relief is sought against the propeller, that he may admit or take issue thereon, or allege matters in avoidance thereof.

2d Exception.—The statement of facts in said libel is not sufficient to entitle the libellants to any relief against the propeller Mary I. Vaughan, and if admitted would not afford a ground for a decree against her.

The claimant of the Telegraph also filed exceptions to the libel (fol. 29–30.)

The exceptions were disallowed by the District Judge (fol. 32.)

V.—It is submitted that the exceptions to the libel of the claimant of the Vaughan should have been allowed.

And it is further submitted, that the statement of the fact of the collision and the consequent sinking of the boat, and of the circumstances alleged in the libel, without any statement of the relative courses of the respective steamers, or acts of commission or omission upon which the imputation of fault might be predicated, which are required by the practice in Admiralty to be stated in plain allegations to apprise the claimant

of the grounds of fact upon which relief is sought, that he may admit or take issue thereon or allege matters in avoidance thereof, are not a sufficient statement of facts in the libel to afford ground for a decree in a Court of Admiralty, whose decree must be in conformity to the rule of the Civil Law *Secundum allegata* as well as *Secundum probata.*

Hall's Ady. Pr., 126, sec. 9.
The Hoppet, 7 Cranch R., 394.
The Haswell, 2 Brow. & Lush., 247 (P. C.)
The Eddy, 5 Wall, 481.
Ady. Rule, XXIII.

VI.—The exceptions being disallowed, the claimant of the Vaughan answered, (fols. 34 to 41), and so did the claimant of the Telegraph. (Fols. 43 to 50.)

1. In answer on part of the Vaughan in 2d Art., issue was taken on libellant's claim of title by the allegation that the libellant had not, at the time referred to, any title or interest in the barley, &c.; and in the following articles are set forth the relative courses and particulars of the approach of the two vessels, showing that after the Vaughan had come round the point of Butter Hill, and was headed down the river, the lights of the Telegraph were seen at a distance off of a mile and upwards, below, coming up; that on a nearer approach a signal was made from the Telegraph by one blast of her steam whistle of her intention to pass to the right, and thereupon a response was made on said propeller by one blast of her steam whistle, and the helm of the Vaughan was immediately put hard aport, and so continued until

she was on a course to pass the said steamboat and her tow to the right, to westward, at a safe distance, when her helm was steadied; and then, on discovering that said steamboat was not making a course to pass said propeller and her tow to eastward, the propeller, which before that was going at the rate of about five miles an hour, was slowed, and her wheel hove hard aport, and then her engine was stopped and backed, and was backing when the collision happened by the barge on the port side of the Telegraph striking with her bow near or against the bow of the Sherman Lewis with great force and violence, parting the lines which held said canal boat to the propeller, staving in her bow, and causing so much damage to said canal boat, that in a short time she went down, with the barley on board, in very deep water.

It is then alleged that the collision and damage therefrom arose from the fault of the navigation of the Telegraph in not porting her helm after making said signal, or other fault in not making or keeping a course to pass said propeller and tow to eastward, or in not keeping a good lookout, &c.

2. In the answer of the Telegraph as to the circumstances of the approach of the two vessels, it is alleged that on the night when said collision occurred, and shortly before said collision, the said steamboat Telegraph, with the barges in tow and alongside of her, was proceeding on a voyage up the Hudson River, towards Albany, at a slow rate of speed, when about three o'clock in the morning, and about opposite a point known as Stoney Point, the night being clear, those in charge of the Telegraph sighted a red light

coming down the river, about half-a-mile off, which red light proved to be the light of the Vaughan. That when said light was first sighted, said propeller was headed down the river, and partly to the westward, and in the act of passing to west, or larboard side, of another steamboat, ahead of the claimants' boat, also passing up the river; that as soon as said propeller had so passed said steamboat, she immediately changed her course to the eastward, and on a course which, if persevered in, would bring said propeller across the bows of the Telegragh, so as either to collide with her, or pass to the east, or starboard, side of her; that at this place the river was about one mile wide, and the night was clear; that said steamboat Telegraph, was well and properly manned and found, had lookouts and all proper and requisite signal-lights hoisted; that correct and proper management and navigation required the said two vessels thus approaching each other should sheer to the right, or starboard side, and pass to the starboard of each respectively; that, accordingly, the steersman of the Telegraph put his helm aport, and changed the course of said steamboat several points to the starboard and eastward, and blew her steam whistle loudly, to which the said propeller made no response; that the said propeller did not, as she should have done, likewise sheer to the right, but kept on her course, at full speed, in a direction across the bows of the Telegraph; that as soon as those in charge of the Telegraph perceived that there might be danger of a collision, the engines of the Telegraph were slowed, then stopped and reversed,

so that, at the time of the collision, the steamer Telegraph was not under headway; that shortly before the collision the Vaughan did sheer to the right, but not sufficiently to pass clear, &c.

3. If the Vaughan were headed down the river, partly to westward, in the act of passing another steamboat ahead of the Telegraph, at a distance of about half a mile off, when first sighted from the Telegraph and immediately upon passing the steamboat ahead, changed her course to the eastward, and on a course which, if persevered in, would bring said propeller across the bows of the Telegraph, so as either to collide with her or pass to the east or starboard side of her, as it is stated in this answer, correct and proper navigation did not require, as it is stated therein, the said two steam vessels thus approaching each other should each sheer to the right or starboard side, and pass to the starboard of each respectively; and the alleged change of course of said steamboat several points to the starboard and eastward, while the propeller was on a course to pass to eastward in a direction across the bows of the Telegraph as the two vessels were approaching each other, as stated in said answer, would be a sufficient ground for charging the Telegraph for the consequences of the collision.

This upon the application of articles fourteen and eighteen of the Rule to Prevent Collisions.

VII.—As to the title.

1. The libellants put in evidence a bill of lading, Exhibit A, (at fol. 76,) dated 7th October, 1864,

showing a shipment by O. & J. Lynch, of Beauharnois, in good order and condition upon the boat Sherman Lewis, whereof Mandrid Lewis was Master, lying in the port of—and bound for Albany or New-York, of 3,684⅘ bushels barley, (forty-eight pounds per bushel,) to be delivered in the like good order and well-condition at the aforesaid port of Albany or New-York, (the act of God, the Queen's enemies, fire, and accident, the dangers of the seas and navigation only excepted, and all and every of whatsoever nature and kind excepted,) unto the order of O. & J. Lynch, or to their assigns, he or they paying freight for the said goods, at eight cents per bushel to Albany or nine cents per bushel to New-York, in gold, with average, which was signed by C. Copeland, for Mandrid Lewis, with a direction endorsed "deliver to order Messrs. Gordon, Bruce & McAuliff," signed by O. & J. Lynch, and a statement, (folios 74 and 75,) of Thomas Gordon & Co., that the facts with regard to the consignment of two loads of barley by O. & J. Lynch, of Beauharnois, to Messrs. Gordon, Bruce & McAuliff, of New-York, in the month of October last, were as follows:

That Thomas Gordon & Co., of Montreal, were the agents of Gordon, Bruce & McAuliff, and had general authority to procure consignments to them, and to make advances, on their account, on all shipments to them. In October last, and some days previous to the 25th of that month, they agreed with O. & J. Lynch to consign two loads of barley by the canal boats Sherman Lewis and R. M. Adams to Gordon, Bruce & McAuliff, under which the barley was started for New-York, they having before that engaged for the Messrs.

Lynch, the boats from C. Copeland to ship the barley to New-York.

As to these particular loads of barley they had special authority to advance upon them by drafts on G., B. & McA., at 30 days, of which Messrs. Lynch were advised before the bill of lading was sent. The bill enclosed (above recited) was the original bill under which the barley was consigned to G., B. & McA. by the Sherman Lewis. They forwarded it on the 25th October, to G., B. & McA. endorsed by O. & J. Lynch at request of O. & J. L.

They received this bill from O. & J. Lynch and forwarded it to G., B. & McA. and advanced upon it at the same time, as agents of G., B. & McA., the sum of $29.50 for premium of insurance upon the barley. At the time Messrs. L. & Co. were also indebted to Messrs. G., B. & McA. in the sum of $111.24, for advances theretofore made by T. G. & Co. to them as agents of G., B. & McA.

The further evidence in this behalf is in the deposition of John Gordon, one of the libellants, (fols. 54 to 57). My firm is Gordon, Bruce & McAuliff. Their general business, general commission, among other things receiving consignments of grain. The grain described in Exhibit A. was the grain consigned to us. It never reached us; I think it was the 26th October that the Sherman Lewis was lost. I received the bill of lading the same day I heard of the loss of the grain.

The business of O. & J. Lynch in St. Timothy, is dealers in grain, &c. We have received grain of O. & J. Lynch before this consignment. In the course of our business we made advances on these consignments. Such advances were made before the cargo themselves were realized.

On his Cross, Previous to the 27th October, I had received a letter from my brother's firm at Montreal, our agents there, advising us that Lynch & Co. would send to us two cargoes of barley, one by barge R. H. Adams and one by barge Sherman Lewis. The following are the terms of the advice:

"Barge R. H. Adams, (2,894.$\frac{17}{48}$) barley, and Sherman Lewis, (3,684.$\frac{3}{48}$ barley, shipped by Lynch & Co., will report to you. We will likely hand you bills of lading to-morrow."

Next we received Ex. A. or a duplicate of it on the 25th or 26th October last. No advances were made on the Sherman Lewis to my knowledge. The barley never did reach us, as it was lost.

If it had arrived here and been reported, it would have come into our hands in due course, to be disposed of by us as commission merchants. We had no other interest in it than we would have had as commission merchants and consignees, for sale if it had arrived, unless our agents in Montreal had advanced on it. I don't remember of ever receiving any advice of our agents in Montreal as to their advancing on it. There was no other consignment with reference to this cargo other than the letter and Ex. A.

Re-direct.—Thos. Gordon & Co. of Montreal, were authorized by us to make advances for us upon such consignments at our risk.

2. The counsel for libellants relied upon the advance by Thomas Gordon & Co. as libellant's agents, of the sum of $29.50, for premium of insurance upon

the barley, of which libellants were not advised, but which is stated by the agents to have been advanced on the bill of lading on its receipt to be forwarded, and their forwarding it to the libellants as conferring a special property on the libellants, and right of possession in the barley *in transitu* sufficient to maintain the action.

3. No doubt a bill of lading shall pass the property upon a bona fide endorsement and delivery for value where it is intended, so to operate in the same manner as a direct delivery of the goods would do, if so intended. Lord Ellenborough in Newsom *v.* Thornton, 6 East, 41. Waring *v.* Cox, 1 Camp, 369.

Upon the facts in this case no such intent is to be inferred.

Independently of an agreement conferring an interest in the goods in furtherance of which it is endorsed and delivered, the assignee of the bill acquires no interest in the goods and cannot maintain any action for an injury done them.

Blackburn on Sales, 279, 288, 289,

The circumstances of the delivery of the bill to Thomas Gordon & Co., at Montreal, to be forwarded to New-York with the direction endorsed referring to the delivery in the bill mentioned for the delivery at New-York of the goods to the order of the libellants, with the view and for the purpose of a consignment of the goods for sale in New-York by the libellants upon or after arrival at that port, without previous negotiations or request for the advance of $29.50 for premium of insurance upon delivery of the bill at Montreal, or other circumstance from which it can be inferred

that the delivery of the bill at Montreal was made to secure this advance, excludes the supposition of any intent to pass the title to the goods at Montreal, or any right of control or possession of the goods before arrival in New-York.

In legal effect the advance of the premium of insurance at the time of the delivery of the bill of lading at Montreal, with the direction endorsed, to be forwarded, and not as security for the advance, was an advance on advice of the shipment, as in Sargeant *v.* Morris, 3 Barn. and Ald., 277, for which, as held in that case, the libellants would have had a lien if the goods had been received by them, but which could have no effect to transfer the property.

4. O. & J. Lynch, the shippers were, also the consignees named in the bill of lading, unto whose order the barley was to be delivered in New-York, if not prevented by accidents of the navigation and other excepted perils against which the shipper had provided by insurance effected in Montreal.

By the direction endorsed on the bill, made with a view to a consignment for sale on arrival in New-York, the libellants were the appointed agent, to receive the barley on its arrival for purpose of sale, and the institution of a suit on its arrival in New-York, to get possession or for non delivery as consignee or agent for the absent owner, might be within their commission and authorized even, although having no beneficial interest in the barley, under the rule in admiralty which allows a consignee or agent for an absent owner to institute a suit for a purpose within the scope of his authority.

See Houseman *v.* Schooner "Caroline," 15 Peters, 47.

Lawrence *v.* Minturn, 17 How., 100.

McKinley *v.* Morrish, 21 How., 355.

The libellants not having the legal title or any property or right of possession at time of loss, and the suit being without the scope of their authority as consignees or agents, for the purpose of sale on arrival in New-York, it is submitted the case does not fall within this rule.

In admiralty the party entitled to relief should always be made libellant; and the practice of instituting a suit in the name of one person for the benefit of another, to whom the right has been transferred, only obtains in particular cases. Fritz *v.* Bulls, 12 How., 466.

In this case the libel ants claim in the libel in their own right as consignees.

VIII. The facts of the collision upon the testimony.

1. Reference is made to the Government chart from Trigonometrical survey of the Hudson River, sheet No. 2., for the bearings of the places referred to in the testimony, West Point, Crow Nest, Butter Hill, Cornwall and Newburg, on the West side, and Magazine Point, Cold Sp ing. Stoney Point and Polypus I land on the East side, and to the width of the river between Magazine Point and off Butter Hill, by the scale half a mile.

2. Mandrid Lewis, Captain of the Sherman Lewis, who was not on deck until after the collision, (whose testimony bearing on the circumstance, is found in

the record at fols. 61, 62 to X in 65, 67 into 68, 69 into 70, redirect in 71,) being called for the libellant testified from what he saw and observed after he came on deck, to the fact of a collision in the neighborhood of Cold Spring where we sank; this was above Cold Spring, about one and a half miles. The width of the river where we sunk was about one and a half miles. I think we were not far from the middle of the river when she sunk; we were past the entrance of the Highlands, in the Bay. "The weather was very mild! no wind, no rain, quite starlight." "I suppose the vessel that struck us was a barge alongside the steamer Telegraph, her name I don't know. The depth of the water where the Sherman Lewis sunk was 150 feet."

This was the libellant's case as to the facts of the collision.

3. As sworn to by the witnesses from the Vaughan, the facts, courses and movements preceding and leading to the collision are as follows:

The Telegraph's lights coming up the river were first seen from the Vaughan when the latter was off Butter Hill, after she had rounded the point to eastward, and was then steering a course directly down the river. The Telegraph coming up when her lights were first seen from the Vaughan, was about a mile off, and near the centre of the river, but a little to the westward of the centre, and a little to the westward of the Vaughan. As the Vaughan on this course, almost directly down the river, and the Telegraph

coming up, were about half a mile apart, the Telegraph gave a signal by one blast of her steam whistle, to which the Vaughan replied by blowing one whistle, as loud and long a blast as they generally blew for a signal.

The night was very still, and little or no wind. Immediately upon the Telegraph's signal, the wheel of the Vaughan was put hard aport by the wheelsman Cary, and the Captain, Brayton, took hold and helped him. After he had blowed the whistle in answer, which he had done within two seconds after the signal of the Telegraph, putting her helm to port, steered the Vaughan to westward, and she was kept on that course until it was seen that they had opened a gap wide enough to clear the Telegraph to westward. The Captain then steadied her, and in about a minute they saw they were closing up again by the course of the Telegraph bearing to westward. As soon as it was observed that the gap was closing, the Vaughan's helm was again put hard aport, her engine was slowed, stopped, and bells rung to back, and had been backing about half a minute before they struck.

The place of the collision was between off Butter Hill and Crow's Nest, and to the westward of the middle of the river.

If the Telegraph had put her helm aport at the time of her signal she would have passed to the eastward.

If she had kept on a course straight up after her signal, there could have been no collision, and so the collision was caused by the Telegraph's bearing to westward instead of to eastward, contrary to the purport of her signal, and con-

trary to what the Vaughan's pilot had a right to expect.

That the collision was caused, as above stated, is confirmed by the weight of the evidence from both sides that the place of the collision was to westward of the middle of the river.

Patrick Cary at wheel of the Vaughan, fols. 80 into 83, and on Cross into fol. 85; William Rogers, 1st Engineer, fols. 88 to 90; Rufus Brayton, Captain, fols. 90 to Cross-ex'd, and fol. 96, &c.; Cross 97 to the Direct in 99, and at fol. 102.

Cary recalled as to occurrences after the collision, about which there was a dispute of no importance on question of fault for the collision, 172 to 179.

Brayton recalled, fols. 180 to 182.

Ann Brayton, fols. 184, 185, to interval between signal whistles of the Vaughan, a loud whistle and the collision, at the time of which was something that sounded like an escape of steam, mistaken by some of the witnesses for a signal whistle of the Vaughan. See Mandrid Lewis, fols. 64, and in Cross, fol. 68.

Thomas Loyd, Engineer, to Vaughan's signal being loud, the signal bells being obeyed by Engineer, and the place of the collision being on the west side of the river, fols. 188, 190.

4. On the part of the Telegraph, Charles Scutt, before at the time of his signal to the Vaughan, and after, until the imminency of the collision, was at the wheel and the only person above the deck,

and was performing the duties of master, pilot and lookout.

He swears that a diagram, Ex. B, which is printed, is a correct map of the river.

Comparing this with the coast survey map, shows the inaccuracy of the conception and the liberty he has taken in throwing Polypus Island from close to the east shore, over on the west side of the river and in bringing it down the river.

On this diagram is a sketch by Charles Scutt, which represents the place of the collision as well over on to the east side of the river, and above off Butter Hill, the Telegraph off Stoney Point, when the signal by one blast of his steam whistle on observing the course of the Vaughan across the river to eastward, followed by the Telegraph's porting while the Vaughan continued on her course to eastward until very shortly before the collision, when she ported.

According to his testimony, when he came on watch above West Point, Zach Scutt, his brother, was at the wheel. He was about 200 yards from the west shore, a little below Cold Spring Foundry Dock, when he took the helm from Zach. When he took the helm he did not see the Vaughan. He hauled the Telegraph off into the middle of the river to the eastward, by porting his helm as soon as he took it.

He met between Cold Spring and Stoney Point the Erastus Corning after he had ported his helm and got into the middle of the river. The Corning passed off his port side to Westward. He saw at that time a propeller going up ahead of him, whose track he was following up.

From information of the pilot, and seeing the

name the next morning, he knew it was the Batt. At the time he did not know her name. After passing the Corning he heard two whistles from the boat ahead of him going up. The minute after that he saw a red light coming from under the Batt's bow, sheering over to the West. When she altered her course, steering south-east, this vessel with a red light seemed to come towards him, heading him off. He blew his whistle once. He should say it was half to a quarter of a mile off when he blew his whistle; it was this side of Butter Hill. He was half way across, *i. e.*, in the middle of the river, when he blew his whistle, heading n rth-east. After blowing his whistle he altered his course a little, more to the eastward. He heard no whistle in reply to his. The propeller seemed to be heading him off—running across his bows. Then she altered her course a little more for square towards him. She must have ported her helm a little. My pilot, Zach, then sung out to me, "you are coming head and head." I said I have got my helm hard aport and can't get away from her; I must stop. He then rung his bells to slow, stop and back. Next occurred the collision. After he blew his whistle there was nothing he could have done to avoid the collision which he did not do, except to stop. He rung to stop as soon as he discovered there was any danger of collision.

On *Cross*—He came out just after he ha l turned Magazine Point. When he came into the pilot-house, Zach, the pilot, said he would go and get a cup of tea, and he took the wheel. That was just below the Foundry Dock at Cold Spring. He

had not seen the Vaughan before Zach went down to tea; of course did not know where she was at that time.

He could not tell whether there was or was not a man on the deck of the Telegraph from the time Zach went down to get his tea until he came up again.

I did not know Zach was on the forward deck till he sung out, "You are coming head and head;" vessels were then probably 100 yards apart—may be a little less.

At 1.48 I turned my wheel a little aport first, immediately after blowing my whistle. I did not put it hard down till after I began to slow. I don't think it was over three quarters of a minute after I began to slow before I rang to stop.

In the part of his testimony (fol. 142) where he states that he was half way across, *i. e.*, in the middle of the river, when he blew his whistle, heading north-east, and after blowing his whistle altered his course a little more to the eastward, followed by the statement that he heard no whistle in reply to his, he adds: north-east would be my proper course up the river, and carry me to the east of Polypus Island. I was not intending to pass to the eastward of Polypus Island, but to haul into the westward.

5. Upon a course of the Vaughan after passing a boat ahead of the Telegraph south-east, and across the bows of the Telegraph, the latter heading north-east as the two vessels were approaching, as the testimony of Charles Scutt supposes, relative courses on which the Telegraph would be off the starboard side of the Vaughan when the signal of

the Telegraph was given. If not hearing a signal in reply to his, his statement, that he altered his course more to eastward, is a confession of fault the more flagrant from its manifest tendency to produce a collision.

In the Telegraph answer (fol. 47), it is stated that the steersman put his helm to port, and changed the course of said steamboat several points to the starboard and eastward as he blew his whistle. And if so, the culpability of the master of the Telegraph would be the greater.

It may be believed that the master of the Telegraph, the only man at the wheel and on deck, whose attention had been occupied by the passing of the Corning just before his signal, and by looking at a tug ahead of him whose track he was following, and engaged in the navigation of his vessel at a point where he was intending to haul into the westward, might not hear a responsive signal from the Vaughan, however loud, or if he did, might not notice it as coming from the Vaughan.

But it is difficult to believe that he, at a point where he was intending to haul into the Westward, and supposing the Vaughan to be on a course South-East across his bow, not hearing a responsive signal observed to come from the propeller, should have changed his course more to Eastward and across the line of direction of the propeller; against the probability that if he changed it at all he would have changed it to Westward.

That he was mistaken in supposing that the course of the Vaughan was South-East is shown by the testimony of the pilot of the Telegraph, that the Vaughan had straightened down the river

from a course to Eastward before this pilot went down into the cabin, at a point below where the Telegraph's master first saw the Vaughan, as well as by the witnesses from the Vaughan when the vessels were a mile apart; and that the master of the Telegraph changed his course to Westward from the middle of the river, where he gave his signal, is proved by the witnesses from the Vaughan and by the fact that the place of the collision was to Westward of the middle of the river.

6. Zach. Scutt, the Telegraph pilot, testifies that he saw the propeller before he went down to tea. When he first saw her she was coming about right down the river, and was to Westward of us and near Butter Hill, near to some other tow that was bound up, heading to Eastward, more across the river. She then straightened down the river, about South. She did not keep on the Eastward course more than two or three minutes. This was before I went down stairs into the cabin. She was then a mile off. I did not look to see whether she had straightened down the river, before I went down to the cabin; but she must have, to have kept in the channel. (Fol. 123.)

On *Cross*, (125), I saw the propeller before I went down to tea; think we were a little below Cold Spring, or somewhere along there at that time; propeller was then opposite Butter Hill, below Polypus Island, somewhere near a tug, bound up, and we were a mile and upwards apart; I left Chas. Scutt at the wheel.

This testimony shows that the Vaughan had rounded off to Eastward and straightened down

the river before Zach. Scutt went down to tea, and before the time when Capt. Scutt, at the wheel, had seen the Vaughan.

Zach. Scutt heard the Telegraph's whistle when he was in the cabin; he could not remember whether he had finished his tea, but he finished it before he came out; perhaps five, or six, or eight minutes after he heard the whistle he came right out on the forward deck, and stopped there till after the collision. (Fol. 122.) The first thing he did after he came out on the forward deck was to go to Hopton, the engineer, and tell him he had better get to his engine room, for there was a tug coming, and they might need him. (Fol. 126.)

Hopton swears (fols. 113, 114) that the first thing he knew about it the pilot, Zach., came to him and said he thought the propeller would run into us, and to stop the engine, and he stopped the engine and worked it back, and should judge the engine had made eight to ten turns back, may be a dozen, when he felt the blow.

It follows that when the pilot came out on the forward deck, the boats were close upon each other. The pilot's hail, when he came out on forward deck, to the master, "You are coming head and head," also shows this.

When the pilot came out, he saw the Telegraph's captain heaving his wheel aport, changing her course more to eastward, and to the starboard hand, as the bells were rung to slow and stop (fol. 122).

7. On this movement, bringing the Telegraph round toward the north-east, her direction might be, when first observed by the pilot, such as

indicated by his hail, "You are coming head and head," on a change of direction from a previous course bearing to westward after the signals.

8. Levi Deyo, mate of and on the barge Dutchess, was the only witness, on the part of the Telegraph, who was out on deck at the time of the Telegraph's signal, except Captain Scutt.

Comparing Deyo, on direct (at fols. 115, 116), with cross-examination (fols. 119, 120), his testimony is that, standing on the forward deck of his barge, he noticed the whistle of the Telegraph, a distinct whistle blowed when the boats were, he thinks, 300 to 400 yards apart, may be further; he could not tell at night. That he had seen the propeller about in the middle of the river, when he first saw her before any whistle was blowed at all, then heading about south-east half a mile from him. He had no compass to look at. The Telegraph was then steering, he thinks, about very near a north-east course; he can't be positive.

When the Telegraph blowed her whistle, the boats being then at the distance apart above stated, the propeller did not answer.

The boats were then approaching one another very close, and the bell rung on the Telegraph to slow, then again to back. He heard two bells rung for the boat to back and about that time the boats came together as near as he can tell.

That as the boats were approaching, the Telegraph changed her course a little more to the eastward. He was not in the pilot house and did not see whether the helm of the Telegraph was ported or not. The Telegraph changed her course to the eastward before the first bell rung to slow. He

thinks she was sheering to the eastward all the while.

From his cross-examination it appears that from the time he saw the Vaughan, his attention was fixed on her till the boats came together, it appeared to him that the Telegraph was bearing to the eastward of the place of the Vaughn. That is just what he observed.

9. The testimony of this witness to the course of the Vaughan before the whistle was blown, being southeast, corresponds with that of Zach Scutt to her course being southeast before straightening down from what he saw before he went into the cabin when the vessels were a mile apart.

It should also be observed that his testimony as to subsequent course is from appearance with his attention fixed on the Vaughan till the boats came together.

The appearance would be the same to him with his attention fixed on the propeller, if after the Vaughan had first ported and steadied, the Telegraph bore more to westward of the direction of the Vaughan after she had first ported.

10. Upon the supposition of a course of the propeller southeast followed by the Telegraph's altering her course more to eastward from her place in the middle of the river bearing northeast, the necessary result would be a collision well over on the east side of the river, as in Charles Scutt's diagram.

Charles Scutt is the only witness who swears to the place of the collision being on the east side of the river.

Levi Deyo does not state which part of the river the vessels were when they came together.

The evidence collected from the witnesses from both sides, establishes the fact that it was to west ward of the middle of the river.

Patrick Carey, fol. 81. "The place of the collision was between Butter Hill and Crow's Nest, and I should judge nearest the we t shore, to the westward of the middle of the river. The land there is high; there is a shade, we were in that shade."

William Rogers, fol. 89. "The collision was a little above Cold Spring, pretty well on the west shore."

Rufus Brayton, fol. 94. "The place of the collision was at a point between Butter Hill and Crow's Nest, on the west side of the river, about half way between the centre and the west side. There was a shade from the mountains, we were in that shade."

Joseph Buttolph, fol. 155. "When I first came out we were not in the shade of the mountain, rather on the west side of the river."

Sherman Lewis, fol. 160. "When I came on deck the Vaughan was headed a little to westward. I should think we were a little to the westward of the centre of the river, nearer to the centre than the west shore."

Ava Thatcher, (fol. 166), "I was on deck when they struck, (fol. 167). The place of the collision was opposite Cold Spring, near the middle of the river, where we struck rather to the west of the middle of the river when we struck. Land was high and rocky on the west shore; could not say if place where the boat sunk was in the shade of the land."

Thomas Loyd, (fol. 190), "The collision was on the west side of the river. It was nearer the west shore than the middle of the river."

The place of the collision, was so near the west shore that a mistake of the engineer of the Vaughan of a verbal order to back for one to go ahead after the Vaughan, after the collision had stopped to haul in the lines to the boat on her starboard side, carried her almost on to the rocks on the west shore.

Brayton, 180–181, in connexion with Sherman Lewis, at fol. 160.

IX.—On the trial the better tactician who managed the case of the Telegraph was able to combine against the Vaughan the witnesses from both tows. It will be necessary to clear up some misconceptions suggested by this testimony which were brought into the case in the District Court, from a painstaking search into the testimony of witnesses who appeared upon the scene in the immine ce of the collision under circumstances of excitement, and of witnesses not concerned in the navigation of either vessel, for a something upon which to set aside the testimony of witnesses in better positions for o..servation and better informed.

1. Ralph A. Smith (fols 105 to 112) and Michael Stanton (132 to 135) from the Barge Minnisink on port side of the Telegraph.

The testimony of these witnesses should be read together. And so read it will be evident that they came on deck just as the boats were coming together, Stanton coming out ahead of Smith.

The testimony of Stanton, (at 132, 133, and on cross 134,) places it beyond question that when Stanton and Smith came on deck, Stanton coming out first, that the boats were within two lengths

of his barge apart, and that the collision followed almost instantly, the propeller coming down with the tide, and the Telegraph at that time heading a little east.

Of the previous courses, by which the boats had been brought in dangerous proximity, these wit nesses could know nothing.

The estimate of the distance off, by Smith, is larger than that of Stanton, and Smith supposes in the act of collision the Vaughan was heading southeast, and passing off on that course on the port side of his barge (which could not be.)

The testimony of Stanton, in conformity with that of Charles and Zach Scutt, is to the effect that in the act of collision, the boats were coming head and head. The additional fact given by Stanton is that the propeller was coming down with the tide.

2. The conclusiveness of the evidence found in the depositions of these witnesses that when these men came out on deck, the vessels were close upon each other, coupled with his assumption that they came out directly upon hearing the signal whistle of the Telegraph to the Vaughan, led the District Judge to the conclusion that the whistle of the Telegraph was not blown until the two tows were close upon each other, from which it might be argued that the Vaughan's signal in reply, was not blown, nor her other precautionary measures taken before the two tows were close upon each other; and for confirmation of this conclusion, he refers to the testimony of Deyo, from the barge Dutchess, as showing that the boats were

close together at the time of the Telegraph's signal; and argues that the statement of Zach Scutt, that he stayed below long enough to finish his tea, and did not come up until five or six minutes after he heard the whistle, in connection with the fact that when he did come up, he went directly to the forward deck instead of returning to his place at the wheel, seems to indicate that this witness, on hearing the whistle, hastened from the cabin on forward to the place where a lookout should have been where he found the collision was imminent.

It is true that when Zach Scutt came on deck, he went forward, for which the sufficient reason in the evidence is that the nearest way to get to the pilot house was to go forward, and up stairs there. (Hopton, folio 114) And it is true that when he came forward, he found the collision imminent and sung out to Charles Scutt, "You are coming head and head," before which Charles Scutt did not discover danger of collision; and it is also true, as Hopton testifies, that Zach Scutt came from forward, instead of going up to the pilot house, and said to this engineer, he thought the propeller would run into us, and to stop her engine.

But it is not perceived what there is in the testimony of Deyo, from the Dutchess, who swears that at the time of the Telegraph's signal "the boats" were 300 to 400 yards a part, maybe further" to confirm the judges' conclusion that the boats were very close upon each other at the time of the signal; nor what there is in the statement of Zach. Scutt, that he stayed below long enough to finish his tea after hearing the signal, and did

not come up until five or six minutes after he heard the whistle, nor in his going forward when he did come up (that being the nearest way to get to the pilot-house,) to justify the inference or to indicate that the witness on hearing the whistle hastened from the cabin.

And in his inference from the testimony of Smith and Stanton, that the boats were in the imminency of the collision at the time the Telegraph's signal was blown, he has overlooked the fact that the signal referred to upon which they came out on the forward deck, was what they swear to as a second whistle of the Telegraph, (Smith, fol. 106).

3. The fact as to the distance apart, when the signal of the Telegraph by steam whistle was given, as testified to by Charles Scutt, by the effect of the testimony of Zach. Scutt, by Deyo, and the witnesses from the Vaughan, who were on deck, ought to be sufficient to outweigh any inference from the testimony of Smith and Stanton as to distance apart at the time of the signals, without other support for confirmation than such as is above referred to.

4. Ann Brayton, fol 183, 184, swears that before the collision she was in her berth in the cabin aft near the stern of the boat. The first thing she heard was a sharp whistle—had not been sound asleep. This was a steam whistle as loud as ever I heard the whistle blow. The next I heard was bells ring and the engine stop; am not acquainted with the signals, by bells; don't know what they imported.

The cabin, where I was sleeping, is near the wheel which propels the boat, and that could not stop without my hearing it; don't know how long an interval there was between the whistle and the boat's stopping; lay there, thinking about getting up, and then I heard the wheel stop; it was some few minutes after that I heard the wheel stop I I got out of bed; next I made preparation to dress myself, got on my shoes and a balmoral skirt; next came the crash.

In this sequence without mention of any back ing or movement of the wheel in the interval between the stopping and the crash, in which interval Ann Brayton was getting out of bed and making preparations to dress herself, putting on her shoes and a balmoral skirt, and in the supposed admission in the testimony of Captain Brayton, (fol. 102) that he said to William Brevort that the time seemed so long to him, under anxiety from apprehension that they were going to hit, between her stopping and backing, that he thought she had catched on the centre; but she had not, and the testimony of witnesses from her tow that the headway of the Vaughan was not stopped in the water before the collision, the District Judge finds evidence that the engine of the Vaughan was not backed before the collision sufficient to outweigh the testimony of the persons navigating the Vaughan that her engine was backed and was backing before the collision.

Carey, fol. 81.
Brayton, fol. 93–180.
Rogers, fol. 38.
Loyd, fol. 189.

5. Or he finds that evidence in the statement of Ann Brayton (fol. 185) "that she heard of a difference between Captain Brayton and the engineer as to the working of the engine, that was after the collision," upon a misconstruction of this passage in her testimony as a statement that there was a difference between the Captain and the Engineer after the collision as to the working of the engine before the collision.

The testimony is full to show that this difference was after the collision, as to the working of the engine after the collision, in a transaction in no way connected with it as producing it.

See Brayton re-called, fols. 180 to 181; Cary re-called, fol. 173, and other witnesses.

6. The most remarkable feature in the case is the application in the District Court of a misconception that what the witnesses from the tow of the Vaughan call a whistle, heard in the imminency of the collision, was the blast from her steam whistle, as a signal in response to the Telegraph.

Ann Brayton, after swearing to her hearing as the first thing, a sharp whistle—a steam whistle—as loud as she ever heard the whistle blow, which her testimony shows was at a considerable interval before the collision, during which she lay in bed thinking about getting up, and heard the stopping of the wheel, and then got up and prepared to dress, &c., swears (at fol. 185) that she heard something about the time of the collision that sounded like the escape of steam, but could not say what it was.

It was not as loud as the whistle she heard

before the boat stopped. *It sounded short but no very loud.* This sound from an escape of steam on the Vaughan, not as loud as the steam whistle, which sounded short and not very loud, which was heard by Ann Brayton about the time of the collision, at a considerable interval after she heard the steam whistle, was heard by witnesses from the boats Sherman Lewis and Adams, alongside of the Vaughan, about the time of the collision, who call it a whistle.

Mandrid Lewis, Captain of Sherman Lewis, on direct, at fol. 64. I was not on deck until after the collision. I hurried on deck when I heard the whistle.

On cross, at fol. 68. Don't know much about steamboat signals. Know that it is customary for steamboats to signal each other, and to answer. Can't say whether the whistle was the escape of steam only or not.

Ava Thatcher, from the Adams, at fol. 166, swears: I came out about the time of the collision. Was on deck when they struck. I was the first man on deck of our boat. Captain Lewis followed me. I was on top of the hoops when they struck. I had just come out of the cabin.

I heard a whistle on the Vaughan. The whistle blowed about the time they struck. It was only one short sound; just a little whoop once.

Joseph Buttolf, of the Adams, at fol. 153, on direct. At the time of the collision I was in the cabin. I was awake. I heard a whistle, and it was but an instant before I heard the crash. I thought the whistle was from the Vaughan.

On cross, fol. 155. I am not boatman enough to have become acquainted with the use of a

steam whistle as a signal. This whistle was rath r a faint, short blast. Did not see where it came from. I had heard whistles before that. Don't know how long before.

Sherman Lewis, Captain of the Adams, at fol. 159. At the time of the collision I was sitting at the table, in the cabin of my canal boat. I was dressed. I heard the whistle, and I heard the crash. They were not an instant apart. The whistle was, in my judgment, from the Mary I. Vaughan. I was familiar, to some extent, with the sound of her whistle. I immediately went on deck quickly; when I was going out a barge lay where the Sherman Lewis ought to have been.

Charles Scutt, fol. 157. "Just before the boats came together there was no escape of steam on the Telegraph before the collision; saw escape of steam from the propeller's pipe."

7. Can any one doubt the identity of the whistle so-called, to which these witnesses from the tow of the Vaughan testify as the boats were about striking, with the noise from some escape of steam on the Vaughan, short and not very loud, and not so loud as the steam whistle which Ann Brayton heard before the collision, and which her testimony shows was heard by her at a considerable interval after the blast of the Vaughn's steam whistle?

Can anything be more absurd upon the evidence than the supposition that this so called whistle, as the boats were about striking, was a blast from the steam whistle of the Vaughan as a signal?

8. William O. Hopkins, master of the propeller Batt, (fol. 136), was called to identify the Vaughan with a propeller that passed him below Butter Hill, abreast of the Crow's Nest, without answering his signal. (See fol. 138.)

This he failed to do. The passing of the propeller to which he testifies, was not in place nor in time, nor correspondent with the Vaughan's.

Carey, 80, 84.
Zach Scutt, 125.

X.—The abundant proof of great negligence in the navigation of the Telegraph, sufficiently accounts for her master not hearing the responsive signal of the Vaughan when the two vessels were about half a mile apart; or if hearing it, not noticing it as coming from her.

XI.—The case as presented in the answer of the Vaughn, and supported by the proofs, is the case of a collision caused by the bearing of the Telegraph to westward instead of to eastward, contrary to what was to be expected, upon which it is submitted no blame can be imputed to the Vaughan.

XII.—The rule in the Admiralty Court being that, in cases of total loss from collision, the damages are to be assessed upon the basis of the value at the time and place of shipment (Adams *vs.* the Ocean Queen, 5 Blatch., C. C., 593, following cases in this Court, and cases cited by Judge Blatchford in his opinion in this case), the Circuit Court should have affirmed the de-

cree of the District Judge Blatchford in its award of damages based upon the value of the barley lost, at the time and place of shipment, St. Timothy, Canada East, in specie or Canadian currency, on a specie basis, in dollars and cents, equivalent to money of that denomination in gold or in the coinage of the United States, with interest from the date of the shipment.

The Decree, fol. 235.
The Judge's Opinion, 2 Benedict, Dist. Ct. Reports, 47.
Baker *vs.* Ward, 3 Benedict.

Or at the most the Circuit Court should have decreed the payment in gold, or in the coinage of the United States, of the value at the time and place of shipment, in the currency prevalent there, specie or paper, on a specie basis, with interest.

XIII.—The damages decreed by the District Court, if short of full indemnity, are so only for the reason that the claimants, under the Legal Tender Act of Feb. 25th, 1862, might pay the decree in legal tender notes.

A decree for the payment in gold, or coin of the United States equivalent to the specie value at the time of shipment in Canada, with interest from the time of shipment, would be a full indemnity to the Canadian shipper, whose consignees the libellants claim to be.

XIV.—By the Act of Congress, of April 2, 1792, entitled an Act to establish a mint and regulate the coins of the United States (1 Statutes at Large, 246,) specie, dollars and their multiples of the coinage of the United States are established as the money of account of the United

States, Secs. 1, 9, 20. And by the requirement of the 20th Section of that Act, all computations or assessments of damages in the Courts of the United States are to be made and judgments or decrees for the recovery of money, to be rendered in such money of account.

The requirement of this 20th Section, at least authorize, an assessment in gold or in coinage of the United States, and a judgment thereon for the payment in like coinage. The cases in this Court recognizing the existence of two currencies, one specie or gold, and the other paper, and adjudging payment in gold or not, as the justice of the case demands, are also authorities to the competency of the Court to make such assessment and decree.

Bronson *v.* Rhodes, 7 Wall, 229.
Butler *v.* Horwitz, 7 Wall, 250.

XV.—The Act of Congress, of Feb. 25, 1862, was not intended to change the legal standard or measure of value, or rule of damages in judicial proceedings.

XVI.—It was proved before the Commissioner on the reference in the District Court, that the price of barley at Montreal, at date of shipment, Oct. 7, 1864, was 77½ cents, gold or Canadian currency, and that it was 5 cents less at St. Timothy, the place of shipment.

That this was the price of first quality Canada East barley, fol. 198, 200.

There was evidence in the deposition of John Gordon that the barley in question was not first quality Canada East Barley.

There was further evidence that if the barley had reached the consignee in New-Yorkand been sold, if

sold for currency then this would have been converted into gold, and remitted by acceptance of specie draft by the Canadian owners, (fol. 198).

The Commissioner in his report, dated Feb. 11, 1867, (fol. 232), finds the value of the barley at the time and place of shipment at St. Timothy, in specie 70 cents a bushel of 48 pounds, and computes the damages on that basis in gold or coinage of the United States.

On the adjustment of the damages in the Circuit Court under the decree of that Court, an admission of the claimant was put in evidence, that $1 Canadian currency was exactly equal to an American gold dollar, coinage of the United States, at the date of the shipment, Oct. 7, 1864, and that at the date of the shipment a dollar in gold was equal to $1.98 to $2.04 in currency at the New-York Gold Exchange, upon which the specie value in Canada was converted into currency at $2.01 and interest added, (fol. 277).

An exception on the assessment, (fol. 286).

Exceptions to the Report, (fol. 288.)

Opinion of the Circuit Judge, (fols. 272, 273).

Decree overruling exception, &c., (fol. 292.)

XVII.—Upon any conclusion that both vessels were in fault for the collision, the decree should have been against each for a moiety only of the loss.

The Milan Lush, Ad. 403.

The Washington and the Gregory, 9 Wall, 513.

See the form of the Decree in note, S. C., 2 Benedict, Ad. 227.

C. VAN SANTVOORD,

Counsel for Claimant of the Vaughan.

Kilbourne Tompkins, Printer, 16 Cedar Street, N.Y.

Supreme Court of the U. S.

JOHN GORDON, and others,
Libellants,

against

The Propellor "MARY J. VAUGHAN," and Steamboat "TELEGRAPH,"
Appellants.

STATEMENT AND POINTS, ON APPEAL.

The libellants were the consignees of a cargo of barley, shipped on the 7th of October, 1864, from St. Timothy's, a port in Canada, by the canal boat "Sherman Lewis," for the City of New York.

The canal boat was towed from Troy on the Hudson River, by the Propellor Vaughan.

The Vaughan collided with the steamer "Telegraph," near Cold Spring, and the canal boat with the cargo of barley was sunk.

The cause was heard in the District Court for the Southern District of New York, where a decree was made against both vessels; and a reference to a Commissioner, to ascertain the amount of damages, was ordered.

The opinion of Judge Benedict, before whom the cause was heard, is herewith submitted.

Before the cause was brought to a hearing, exceptions were taken to the libel, which exceptions were heard before Judge Betts, who delivered an opinion thereon overruling the exceptions, and whose opinion is also submitted.

It was in proof before Mr. Commissioner Betts, to whom the assessment of damages was referred, that the cargo of barley in question was shipped from the port of St. Timothy's, in Canada, about the 7th of October, 1864, at which place it was worth seventy cents a bushel, in Canadian currency. That seventy cents in Canadian currency were equal to seventy cents in American gold; and that there was no difference in exchange between St. Timothy's and the City of New York. That the cargo was lost on its way to the consignees at Cold Spring, near New York, its place of destination; and that the value of barley, in the City of New York, was at that time one dollar and seventy cents a bushel currency.

The Commissioner reported that the libellants' damages were to be estimated according to the value of the cargo, in the port of New York, in United States currency. This report was excepted to and the exceptions were heard before Judge Blatchford, who overruled the Commissioner's Report, holding that the damages should be assessed at the value of the barley at the port of shipment, such value to be computed in Canadian currency at its nominal value, and not at its value in United States currency. From this decree the libellants appealed to the Circuit Court, where the same was heard before Mr. Justice Nelson, who held that the libellants were entitled to recover the value of the barley at the port of shipment in Canadian currency, reduced to its equivalent in United States currency at that time. His opinion is on page 106. It was then referred to the Clerk of the Circuit Court, who reported that the value of the barley in question, on the 7th of October, 1864, at the port of shipment, was

seventy cents, per bushel of forty-eight pounds, in gold.

That on that day a dollar in gold ranged from 198 to 204, in legal tender currency; fixing the value of each bushel in currency, at two dollats and one cent, with interest at six per cent.

From this Report exceptions were taken and overruled, and an appeal by the Claimants from the whole Decree was then taken to this Court.

The libellants submit the following points:

FIRST.—The District Judge was right in holding, that both the claimants were guilty of negligence in causing the destruction of the barley, and that the libellants were entitled to recover their damages against them jointly and severally.

The facts proved show, that on a clear starlight night, in calm weather, in a straight reach of the Hudson River, where it was nearly a mile wide; the lights of each vessel being visible to the other for more than a mile, with no intervening obstacles to interfere with the transit of either, the two vessels came together with such force that the canal boat with its contents was sunk in a few minutes, the crew barely escaping with their lives. Nothing but the grossest negligence or, what is more likely a determination on the part of each boat that the other should give way to her, could have brought them together. The careful statement of the facts, contained in Judge Benedict's opinion, fully sustains this conclusion.

SECOND.—The learned judge was also right in holding that the libellants as consignees, had shown upon the proofs, their right to maintain the action for the injury to the cargo.

The allegation in the Libel is: That the libellants were consignees of the barley in question, laden on board the canal boat "Sherman Lewis," at the time of collision in course of transportation from Canada to New York. Folio 54.

John Gordon says: "I think it was on the 26th "October, that the "Sherman Lewis" was lost. I "received the bill of lading the same day, I heard of "the loss of the grain. * * * We "have received from O. & I. Lynch (the consignors) "before this consignment. In the course of our "business we made advances on these consignments. "Such advances were made before the cargoes were "received." Folio. 54.

The agents of the consignees state at folio 75, That they advanced to the consignors, the premium for the insurance on this barley, and that the consignors were then indebted to the consignees for advances theretofore made them by the consignees.

It was argued by the claimants on the trial that the libellants must fail for want of sufficient proof of title to authorize them to bring the action, and this upon the ground that the bill of lading is signed by one "C. Copeland" without authority from the owners of the boat. It is not denied that the bill produced is the one under which the barley was actually taken from O. & I. Lynch by Capt. Lewis, and was on its way to the consignees when it was destroyed; nor is it pretended that the Captain refused to start with the barley under that bill of lading, because Copeland signed it, or for any other reason.

The objection is founded upon the fact that there

was some dispute between the Lynchs and the Captain, and upon his statement that he did not authorize Copeland to sign it.

But the testimony shows that Copeland was fully authorized to sign the bill of lading. The Captain himself admits (fol. 66. 67.) that he took the order from him, loaded for him, and received an advance from him. He admitted that the bill of lading shown him was the one under which he took the barley, and was proceeding with it to its port of destination when his boat was sunk.

As between these parties he is estopped from denying Copeland's authority to sign it, because he acted under it as thus signed, starting with the barley and receiving an advance upon the freight.

Again, it is the evidence which the owners of the barley, accepted of the shipment. It is endorsed by them over to the libellants who produce it on the trial. This of itself is sufficient for the purposes of this action, when the simple fact of title to bring the action, is the one to be proved.

But independent of the bill of lading, the fact of the consignment of the barley, to the libellants, and that it was on its way to them, is fully proved by other testimony.

Thomas Gordon, the Montreal agent of the libellants says, (fol. 74.) that in October, he agreed with Messrs. Lynch to consign two loads of barley to the libellants, under which the barley in question was started for New York, having before that time engaged for the libellants the boats from Mr. C. Copeland of Montreal, to ship the barley to New York. (This is the Copeland who signed the bill of lading.)

He produces the original bill of lading under which it was shipped with O. & I. Lynch's endorsement. And this is put in evidence.

Thus the fact of consignment of the barley to the libellants, is proved, independent of the bill of lading. No conflicting testimony on this subject was offered.

The fact of the consignment to the libellants being thus shown, the action is properly brought in their name.

28 Barbour's, N. Y. R. 485. Adams *vs.* Brissell.

5 Selden, N.Y.R. 562. Fitzhugh *vs.* Wiman.

In this case. page 562, Judge Selden says: "The "consignee of property is in law, presumed to be the "owner, and if lost in transitu or diverted from its "destination, suit may be brought, either in his "name, or that of the real owner."

THIRD.—The decision of the Circuit Court, in giving the libellants *indemnity* for their loss was correct.

The decree declares that, "the libellants recover "against the propeller 'Mary J. Vaughan,' &c. The "damages by them sustained by reason of the colli- "sion, by them set forth in the pleadings."

The rule under which damages in such a case, are to be ascertained, is stated with exactness by Judge Nelson, in Smith *vs.* Griffith; 3d, Hill, N. Y. ~~366~~, 336 337, and as follows:

"The damages to which the plaintiff is entitled, if "any, should afford an adequate *indemnity* for the "loss sustained at the time the injury happened. The "fair test of its value, assuming there is no defect in "the quality of the article, and consequently of the "loss to the owner, if it has been destroyed, is the "price at that time in the market."

In this case the property destroyed had a market price, fixed by daily transactions, and it is this price at its exact value on the day of the destruction in the forum where the judgment is rendered that is allowed by the decree of the Circuit Court.

This gives the libellants indemnity and no more, while the rule contended for by the appellants would give them a fraction less than one half the sum of the actual cost of the barley.

The theory of the appellants is, that as the currency of Canada, where the barley was purchased, is eo nomine, the same as in the United States—that is, in dollars and cents—and as this barley was purchased for seventy Canadian cents a bushel, the number of bushels lost multiplied by seventy, will produce the sum which the libellants are entitled to recover in the currency of the United States, to wit, the sum of $\$2426\frac{36}{100}$, and this in the face of the fact that the actual cost of the property destroyed in the same currency was $\$4,896\frac{36}{100}$. This is not "indemnity," and the courts of the United States, have never held anything to give a colorable pretext to the claimant's theory.

The cases referred to by the appellants are founded on contract in which the agreement between the parties has called for the payment of specific sums of money, I have been unable to find a case anywhere, in which such a rule has been held in a case of tort and the claimants have cited none such.

It is sufficient for the purposes of this argument, in order to show that the cases quoted have no application to this case, that the distinction has been expressly recognized in this Court. In the case of Lane *vs.* Oregon, VII. Wallace, on page 81, while speaking of the Legal Tender act, the Court holds this language. "In whatever light we consider this question, we find ourselves brought to "the same conclusion, that the clause making the "United States notes a Legal Tender for debts, has no "reference to taxes imposed by State authority, but "*relates only to debts in the ordinary sense of the word* "*arising out of simple contracts, or contracts by speciality* "*which includes judgments and recognizances.*"

No one will insist before this tribunal that a claim arising out of the negligent or wilful destruction of property is "a debt in the ordinary sense of the word, "arising out of a simple contract or contracts by "speciality."

The decision of this point, therefore, in this Court will not be embarrassed by cases decided in the State of New York,—in some cases by divided Courts arising out of simple contracts or contracts by specialty.

The same construction has been recognized in another form in this Court, in the case of Thompson, *vs.* Riggs, 5th Wallace. On page 678, Judge Clifford says, "where the banker specially agrees to pay in "bullion or in coin, he must do so or answer in dam- "ages for its value, and so if one agrees to pay in de- "preciated paper, the tender of that paper is a good "tender, and in default of payment the promissee "can recover *only its market and not its nominal value.*"

Both of these cases show that a judgment may be rendered in the Courts of the United States according to the market and not the nominal value of a dollar, and when that point is established the judg-

ment below must necessarily be sustained, for the injustice of paying the libellants seventy cents a bushel for what actually cost them $1.42 is so manifest that it will not be tolerated by the Court unless compelled to do so by some inflexible rule which it cannot disregard

FOURTH.—If the indemnity given in this class of cases is to be enforced by a judgment, it must necessarily be in the currency of the country where the judgment is rendered, and must represent the value of the property destroyed in such currency, or it fails to be *indemnity.*

An examination of the opinion of the learned District Judge will shew that he concedes the rule to be as contended for, but in applying it he failed to compute the "value" of the barley in Canada by the same rule he applied to its value in New York, and thereby reached a result not deducible from his premises.

In his opinion, the learned Judge says, "if in this "case the action was on the bill of lading of the "barley for its non-delivery in New York, the "proper rate of damages would be $1.70 *a bushel,* but "in case of loss of cargo by collision or other tort, "the rule is equally well settled that the "*value*" of "*the lost property at the time and place of its shipment* "*is the measure of damages.*"

Here the learned Judge uses the expression "*value* of the lost property at the time and place of shipment," and this is all the libellants claim.

He admits that the "value" of the barley in New York to have been $1.70 a bushel, and that we are enabled to recover the "value" of the same barley

at St. Timothy's. This value in the same currency in which he estimates the New York value was $1.42; but he gives but 70 cents instead of $1.42 because *eo nomine* this value in Canadian currency was but 70 cents.

Can the actual "*value*" of property be affected by the name of the currency in which it is bought or sold? When the "*value*" in New York is stated by the learned Judge in United States currency, must not the "value" of the same property anywhere else be stated in the same currency, or its equivalent, if in another currency, to convey to the mind the idea of its true "value"?

Hence, while the proposition of the learned Judge is well stated, his deduction is fatal to his rule, because seventy of the cents he is speaking of did not represent the "value" of a bushel of barley at St. Timothy's.

The seventy cents were as foreign to the one hundred and forty-two cents, as far as all questions of relative value are concerned, as if they had been called "pence" or "centimes;" in other words, it took over two of the latter to make one of the former.

Again, the learned Judge says, that if the action had been against the carrier, the libellants would have recovered for the barley at the rate of one hundred and seventy cents a bushel, as the "value" in New York.

Can it be possible that the party, in bringing his action for the loss of the same barley against the man who did the wrong, can only recover seventy cents a bushel, while if he had brought it against the party, who was without fault, he could have recovered one hundred and seventy cents a bushel?

and that under a ruling which holds that the only difference between the liability of the parties is the difference in *value* between the place of shipment and place of delivery? In this case that difference was twenty-eight cents a bushel. Hence, if this difference in "value" be but twenty-eight cents a bushel, there must be a fallacy somewhere in a deduction from such premises that makes the difference seventy-two cents.

The Circuit Court for the Northern District of New York has also had this question before them. In the case of Councer *vs.* the steam-tug "Griffin." 5th Law Register. The action was brought to recover the damages, sustained by the libellant in the loss of the scow "Andrew Murray" on the Niagara River, at the mouth of Chippewa Creek, in Canada West.

The Commissioner reported that on the day when the scow was lost she was worth at Chippewa the sum of $950 in gold, or Canadian currency, and that on the same day gold or Canadian currency was at a premium in the City of Buffalo of 49 per cent. over United States legal tender notes.

Judge Hall, in his opinion, says: "Canadian cur-
"rency is a foreign currency, and though the
"Canadians use the term dollar as a designation of
"a unit of their currency, as we do in ref-
"erence to our own currency, it does not
"follow that their dollar is the equivalent
"of ours:—In fact the report shows that one hun-
"dred dollors of their currency was, at the time of
"the loss, of the value of one hundred and forty-nine
"dollars of ours, and therefore to *indemnify* the libel-lant
"for his loss by a payment in our currency, it is nec-
"essary to give him one hundred and forty-nine dol-
"lars of such currency, for every one hundred dol-
"lars of the value of his property, estimated in the
"currency of Canada. * * * That

"the loss occurred within a mile of the line dividing "the United States and Canada; and that values are "expressed in dollars and cents there as well as here, "can make no difference in the principles of law ap- "plicable to the case, and if we look at the equities "of the case, it must be apparent that the legal rule "is the equitable one."

This case was affirmed in the Circuit Court, and the only doubt in that case seems to have arisen from the fact that the loss had occurred in Canada. It appears to have been taken for granted that if the loss had occurred on the other side of the river, within the limits of the United States, there must have been no doubt whatever as to the rule upon which the damages were to be calculated.

Judge Ware, in the case of the ship Rochambeau, XXVI Boston Law Reporter, 504, applied this doctrine to a case for seamans' wages, made in New Brunswick, in an opinion that has never been satisfactorily answered either in its application of legal rules, certainly not in its principles of equity.

It being conceded, therefore, that the value of the barley at St. Timothys, at the time of its shipment is the amount the libellants are entitled to recover, and also that the barley was lost within the limits of the United States where the suit is brought, the sole question is, how can that "value" be determined, so that the libellants will recover its equivalent in the currency in which he must take his judgment.

It was shipped on the 7th of October. That determines the time when its value or market price is to be fixed.

Its value, or market price on that day, in that place, in the currency in which judgment must be rendered was $1,42 a bushel. The recovery for this "value" would be legal indemnity,—no more, no less.

Can a rule of recovery which reduces it one-half be adopted without violating the plainest rules of justice?

There is no question in this case involving the constitutionality of the Legal Tender Act. The principle involved is whether the libellants are entitled to indemnity for their loss, and if so, whether the Courts have power so to estimate the value of the property destroyed, in the currency in which the judgment must be rendered, that the party sustaining the loss can get the indemnity to which he is entitled. It would be a strange anomaly if this were not so. And this Court has already decided in the cases heretofore cited that no such anomaly exists.

SAMUEL E. LYON,

Of Counsel for Libellants.

U. S. District Court.

THE PROPELLER MARY J. VAUGHAN and the STEAMBOAT TELEGRAPH,

ads.

JOHN GORDON AND OTHERS.

July 3d, 1866.

BENEDICT, *J.*

This action is brought by the consignees of a cargo of barley shipped on board the canal boat Sherman Lewis, a boat being towed down the Hudson River, by the propeller Mary J. Vaughan, to recover damages to the barley caused by the sinking of the canal boat in a collision between two tows which occurred between three or four o'clock in the morning of the 25th of October, 1864. The libel which is filed against the steamboat Telegraph, the vessel towing the up-tow, as well as against the Vaughan, was excepted to by the libellants and the exceptions have been heard by Judge Betts, and decided by him, in favor of the libellants, so that no question appertaining to the pleadings remains open. The controversy before me is merely one between the two steamboats, neither claiming that any fault on the part of the libellants or of the canal boat Lewis, conduced to the accident, but each steamboat insisting that negligence on the part of the other was the sole cause of the collision.

In support of the theories put forth by the advocates of these steamboats, many witnesses, both from the steamboats and from the vessels in their tow, have been examined, and upon the points most strongly contested by the advocates, the evidence is confused and contradictory. Several important features in the case are, however, conceded by both these parties, and others are too clearly proved to be fairly open to question.

In behalf of these steamboats it is conceded that the accident occurred in a straight reach of the river, where there was abundant room for tows of larger size than these to pass without danger, that no other vessels were near enough to effect the movements of either tow. That neither the speed or size of the tows was such as to prevent a proper control over each, that the night was clear starlight without wind, that each vessel saw the other at the distance of at least a mile. Notwithstanding which, instead of passing in safety, the larboard canal boat being towed alongside the Vaughan came in contact as they passed, with the larboard barge being towed alongside the Telegraph, with such force as to sweep away all the fastenings of the canal boat, and cause her to sink in a few minutes.

In addition to these facts, it is proved beyond a reasonable doubt, that when the two came in contact the Vaughan was under good headway, her engine not having been reversed, and that the Telegraph was barely still in the water, her engine working back, but the vessel not having gathered sternway.

It must also be considered as proved, that neither steamboat had any person stationed as lookout, that the Vaughan was being steered by a person of little or no experience as a pilot on the river, and that her engine was in charge of a person incompetent for the duty, while the Telegraph had at the time no person on deck but her master, who was not a regular pilot, and had charge of the vessel temporarily, while the regular pilot was gone below for a cup of tea, and that her engine was in charge

a person who had also to perform the duty of fireman, and was called from shovelling coals below to attend to the stopping of his engine.

These circumstances seem to me to present a case where a court would be justified in disposing of the defences set up by the respective steamboats with the simple remark, that it was incumbent upon each steamboat, if it would free itself from the liability, *prima facie* attaches for an accident apparently so needless, to show by clear evidence. that the collision was caused by some positive and manifest fault on the part of the opposing vessel, and not by the incompetency and insufficiency of her own appointments and her want of a proper lookout, and that the accounts given by the witnesses produced by these respective parties. are too confused and unsatisfactory to warrant holding either steamboat free from fault in coming in contact as these vessels did, in a broad river on a clear night.

But as these accounts when carefully examined not only fail of exculpating the parties, putting them forth but to convict them of fault, it is deemed more just to state the conclusion which my examination of the evidence has led me to form, in order that any misapprehension, into which I may have fallen, may the better be corrected on appeal by additional evidence or by the greater wisdom of the appellate court.

First. Then, with regard to the management of the Vaughan. The account given by her wheelsman, and master, of what transpired on this occasion, is, that they saw the Telegraph, a long way off, and when she had arrived, within about half a mile of them, they heard her blow a single whistle, that they at once replied by a single whistle, and at the same time ported and took a course which would have carried them safely by to the west of the up-tow; that the Telegraph, when near them starboarded and bore to west across their course, whereupon they ported hard and stopped and were backing, when they were struck by the larboard boat of the up-

tow. But the testimony of the wife of the master of the Vaughan, and of two or three persons who were on the canal boats in her tow, to say nothing of the admission of the master himself, that at the time he thought his engine must have caught upon the centre, shows that the Vaughan was not backing at the blow, on the contrary, under good headway, and that the Telegraph was not moving to west, as charged by the wheelsman and master of the Vaughan, is shown by the form and position of the wound upon the larboard bow of the barge, inflicted by the stern of the canal boat. This wound, it was strongly urged on the part of the Telegraph, shows that the Vaughan must have been moving to east at the blow. But I do so understand the description of the break. If anything in the case is clear, it is when the tows were approaching near to each other, the Vaughan was about ahead of the Telegraph, and that the vessels came in contact head on, the helms of both steamboats being thus hard-a-port. That the wheelsman and master of the Vaughan, also incorrectly fix the time of the blowing of these whistles seems clear. They say, that the only whistle which they blew, was blown when they were half a mile from the up-tow, but the weight of evidence from their own tow, is that when they whistled, the up-tow was close upon them. This is shown by the evidence of three persons, who are free from any interest in the controversy, and in no way responsible for the collision, one of whom, Thatcher, was produced, and examined on the part of the Vaughan, but when deposition was read on behalf of the Telegraph, these witnesses were in the cabin of the canal boat on the starboard side of the Vaughan. They all heard the whistle, and all three started for the deck, but one however reached it before the crash, and the one who did reach the deck, says that he had but time to glance at the approaching tow, before it was in contact with them. Such evidence of acts performed by the witnesses during a period of time in dispute, must be considered far more satisfactory proof of the length of the period than mere estimates of time, expressed by the persons directly responsible for the result.

If, then, the conclusion arrived at from the evidence of

these witnesses from the boats in tow of the Vaughan, is correct, the collision was already imminent, when she blew her whistle, and this being so, the fact that no one on the up-tow heard any replying whistle from the Vaughan, is accounted for, a collision being imminent, their attention was called to the instant danger to their lives and their property, and any whistle then blown, would be most likely to escape notice, while if the signal had been given at any considerable distance, it would hardly fail of being heard by some one on the up-tow.

The time of the Vaughan's signal thus fixed by evidence from her own tow, determines the character of her other movements as set forth in her answer, for, according to her answer, up to the time of giving her signal, no change of course was made by the Vaughan, and immediately after they blew, their movement was to put their helm hard-a-port. It was also, according to her testimony, after her whistle that the alleged starboarding of the Telegraph took place, all which must have transpired, to use the expression of Thatcher, "about the time they struck," if the whistle was blown when stated by the witnesses from the canal boat. That the Telegraph was close on hand when the wheel of the Vaughan was first materially changed, is indicated in the proofs by the circumstance that when, as the master of the Vaughan himself says, he blew his whistle he at the same time took hold of the wheel to help the wheelsman put it hard-a-port—an act apparently unnecessary, if, as the wheelsman says, the Telegraph was then a half a mile off, and the Vaughan was then sheered but a single point; but a very natural act on the part of the master, if the two tows were then near each other, and a rank sheer required to enable them to pass. This view of the management of the Vaughan is confirmed by the evidence of the master of the Telegraph, who swears that he heard no whistle from the Vaughan at any time, and saw no change to west in her course until about the time he slowed. Upon evidence, then, derived from the statements of disinterested persons, from the admissions of the answer, from the acts of the wheelsman and master of the

Vaughan, from the form and position of the blow—all in harmony with statements of the master of the Telegraph —I conclude that the wheelsman and master of the Vaughan have not given a correct account of their management of their vessel, and have failed to prove that the collision was caused by a starboarding of the helm on the Telegraph; but that it appears from their evidence that, although the Telegraph was seen at a considerable distance, and her intention to pass to the eastward understood, the persons in charge of the Vaughan gave no signal and made no material change to west until close to the Telegraph, when they blew one whistle, ported hard, and endeavored to stop; but owing to the shortness of the distance, they failed to sheer sufficiently to clear the approaching tow, and owing to the negligence of the engineer in obeying the bell, did not stop.

If, then, it be true, as claimed by the wheelsman and master of the Vaughan, that they heard when half a mile from the Telegraph a signal from her, indicating an intention that the tows should pass each other to the right; and the conclusions above indicated as to the time of the replying signal from the Vaughan, and of her putting her wheel hard a-port are correct, the Vaughan must be deemed convicted of fault in not replying sooner to the signal, in not sooner stopping, and in not being further to west than she was at the time of the collision.

Turning now to the management of the Telegraph, her own statement of her managers challenges attention. The account given by the master, is, that he saw the Vaughan at a considerable distance, that she soon appeared to be bearing to east and across his course, that he blew one whistle, and only one, to which he received no reply; that he ported his helm, and continued bearing to east until the two tows were near, where the danger of a collision being imminent, and his helm already hard-a-port, he rung to slow, stop and back; but before he could gather sternway was struck by the larboard boat of the down tow, which was then sheering to west.

This account, if true, by no means absolves the Tele-

graph from liability; for if, when she gave her signal, the Vaughan was half a mile off, and bearing to east, it became the duty of the Telegraph as soon as she found that her signal was not answered, to give notice of the omission by other blasts, and at once to stop.

To continue herself to bear to east, and without other blasts of her whistle, after she saw that the Vaughan did not reply, and was disregarding the whistle, by bearing to east, was negligence on the part of the Telegraph, sufficient to render her responsible in this action. Had she stopped as soon as she noticed that her signal was not answered, supposing the vessels to have then been, as she claims, about half a mile apart, it is apparent that no collision would have occurred Upon the account given by the persons in charge of the Telegraph, then I consider the Telegraph to have been in fault for not sooner stopping when she saw that the Vaughan did not reply to her signal, and was bearing to east.

I have thus far considered the movements of these two steamboats, assuming, as a fact, what is conceded by the advocates of each steamboat, that the whistle of the Telegraph was blown when she was at a considerable distance from the Vaughan. But there is evidence in the cause which shows that this whistle, instead of being blown when claimed, was not blown until the two tows were close upon each other; and if this be so, it gives an aspect to the case more clearly adverse to both steamboats.

This feature in the evidence was not brought prominently forward in behalf of either steamboat, for obvious reasons, and yet it seems to me to be a controlling feature in the case. It is found in the testimony of the men from the barges in tow of the Telegraph.

Stanton, a hand on the larboard barge, testifies that he heard the whistle of the Telegraph, when he was in the cabin of the barge, and at once came up and went directly forward, when he reached the forward deck, the danger of a collision was so apparent that he took up a

fender with the idea of endeavoring to prevent injury to the barge. Now, it is hardly possible to believe that a person would take up a fender, with the idea of preparing for a collision between two tows moving in a large river, unless they were then very near each other. Smith, too, another witness from the same barge, was also below when he heard the whistle, and came up and passed to the forward deck. He too, considered a collision then certain, for he warned Stanton of danger in holding the fender, whereupon Stanton dropped the fender and went below to save his chest, and before he could get it, the crash came. The testimony of these two witnesses, which I think cannot be read without producing a strong impression that as considerable period of time elapsed between the whistle of the Telegraph and the collision, is confirmed by the testimony of the man on the deck of the starboard barge of the up-tow, and who consider that the tows were approaching very close when the whistle of the Telegraph was blown.

The testimony of Zack Scutt, the pilot of the Telegraph, who was also below when the whistle was blown, points to the same conclusion. This witness was in charge of the wheel during this watch. He turned the wheel over to his brother, the master temporarily, while he himself went below for a cup of tea. Before he went down, he saw the Vaughan then one mile distant. The speed of the Vaughan was five miles an hour, the answer says that of the Telegraph about eight through the water. The one mile then would be run in about five minutes. The pilot staid below long enough to finish his tea, and while there heard the whistle of his boat. His statement is, that he did not come up until five, six or eight minutes after he heard the whistle, but the fact that when he came up he went directly to the forward deck, instead of returning to his place at the wheel, that on his way forward he called to the engineer from below to attend to the engine, with his actions when he got forward, seems to indicate that this witness on hearing the whistle hastened from the cabin to the place where a lookout should have been, and found the collision then

imminent. Another significant statement bearing upon this point is made by Hopton, the engineer of the Telegraph who testifies: "The first I knew about it the pilot came to me and said he thought the propeller would run into us, and to stop the engine"; he did. This incident Zach Scutt is not asked to explain, and it is not stated directly how long after the whistle it occurred. Zach Scutt does however say that he went directly from the cabin to the forward deck, and there remained until the collision, and he also says that on his way forward he told Hopton he had better get to his engine, "for there was a tug coming and they might need him," from which it would appear that the order to stop the engine, which Hopton says was given him by Zach Scutt, when he first heard that the propeller was approaching, must have been given when Zach Scutt spoke to Hopton on his way from the cabin to the forward deck. If this be so, it shows that the whistle had indicated danger to the pilot, and further that he placed little confidence in the ability of his brother, at that time to avoid it, and so undertook to do himself what should have been done before, namely, to stop the boat.

It may be here remarked also that Hopton, the engineer who stopped the engine, gives us to understand that he received no other order to stop, except the verbal one from the pilot, thus contradicting both the pilot and the master.

If from these circumstances the conclusion be properly drawn that no whistle from the Telegraph was blown until the tows were close upon each other, then the true account of this collision is, that these two steamboats also could have, and did see each other when a mile off, either through ignorance, or negligence, or a desire on the part of each to compel the other to give way, kept on their respective courses without material change.

(The wheelsman of the Vaughan says he changed one point; the captain of the Telegraph says he changed "a little,") and with undiminished speed until they were so

near that although both engines were stopped, and one reversed, and both wheels put hard-a-port, there was not room enough for them to clear.

Viewed then in every aspect, the case seems to be one where both steamboats should be held responsible.

As to the point taken on the trial that the libellants have no such interest in the cargo as will enable them to maintain this action, I am of the opinion that upon the proofs, their right to maintain an action for injury to the cargo cannot be questioned.

The decree must, therefore, be in favor of the libellants against both steamboats, with an order of reference to ascertain the amount of the injury.

U. S. DISTRICT COURT.

JOHN GORDON, *et als.*,

vs.

The Propeller MARY I. VAUGHAN and STEAMBOAT TELEGRAPH, M. J. VAUGHAN, *et als.*, *clmts.*

BETTS, *J.*

A libel was filed in this suit by the libellants against the above named tow boats, both proceeding with barges lashed on each side of each tow boat, and both at the time running between Albany and New York, in opposite directions, upon the North River. The two tow boats met and were brought into collision together in the night time of October 26, 1864, near the Highlands, both of said tow boats being under headway at the time; the libel avers that the canal boat "Sherman," then laden with a cargo of barley of the value of $10,000, consigned to the libellants, was charged with the conveyance of said cargo to New York, and was safely attached to the aforesaid tow boat Vaughan for conveyance by towage to New York by the said tow boat Vaughan, and that by means of such collision, the fastenings of the barge to the Vaughan were cut, and the bows of the said barge were staved in with such loss and injury that said barge immediately sunk and destroyed, and all her cargo was totally lost, and that the collision and consequent losses were caused by want of skill, negligence, and improper conduct of the tow boats Vaughan and Telegraph, &c. Both of the above-named propellers appear separately in this suit and file exceptions to the libel for insufficiency in its allegations, under the assumption that the libellants were required by force of the 23 Adm. Rule of the Supreme Court to detail minutely every movement of the two propellers, as also, probably, of the canal boat, indicating the

Nelson v 10 p

misconduct or wrongful omissions in the navigation of the vessels concerned in the collision which caused the loss complained of.

I do not think such construction of the 23d Rule of the Supreme Court applies to cases circumstanced as this one is; the libellants were not concurrent actors in the subject matter of the navigation in question. They, in the case they propound, were passive parties and entitled to immunity, as the case is presented upon the libel, alike from each propeller inflicting injuries upon their cargo without regard to the relative blameableness as between themselves, of the two vessels which perpetrated the wrongful injury received by the libellants.

The pleadings disclose no voluntary act of aggression or movement on the part of the canal boat "Sherman" which requires justification or excuse from her.

They place themselves before the Court on complaint that the two propellers, in navigating an open roadstead, fell upon each other needlessly, and crushed and destroyed a vessel and cargo towed inertly within the pathway. The propellers elected to pursue without any procurement, assent, or knowledge on their part.

These averments, if proved, constitute a clear cause of action on the part of the libellants, and require no further amplification of the pleadings from them. Defensive or explanatory allegations must come from the acting parties, showing wherein the participators in losses incurred, through the apparently common torts of third parties, should be borne in greater or lesser degree by one or the other of the tort feasors.

The Superior Court rule cited, does not apply to the present case.

In the case of *Town* vs. *the Steamer Western Metropolis*, decided the present term, it was held that the rule was not of universal application in the sense of a statutory provision.

Exceptions overruled, with costs to be taxed.

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Mr Jus Clifford

Evening Post Steam Presses, 41 Nassau Street, cor. Liberty, N. Y.

U. S. Supreme Court.

Frederick A. Potts, Claimant of Steamboat Telegraph, and Appellant,

vs.

John Gordon, *et al.*, Libellants and Appellees.

Points for Appellant.

As to the Pleadings.

The Court erred in overruling Appellant's exceptions to the Libel.

(Record Book, pages 2 and 11.)

First.

It is well settled that, while the "technical exactness" usual in common law pleading is not required in Courts

of Admirality, yet it is requisite that the libel should "state, in clear, distinct and intelligible allegations, the whole *gravamen* of the complaint." The libellant "must set forth every material and substantive wrong upon which he intends to rely, and for which he claims damages, in a distinct allegation." And the "proofs in the case must follow the allegations."

Pettengell *vs.* Dinsmore, 6 Law Rep., 255.

This Court, in McKinley *vs.* Morrish, 21 How., 347, says: "Irregularities of pleading in Admiralty, now too frequently occurring, have attracted our attention, and will be treated hereafter according to the *rules and practice* for pleadings and process in Admiralty cases.

In the case of the *Baston*, 1st Sumner Rep., 330, Justice Story says:

I take this opportunity of adding that the manner in which libels of all sorts, and especially of salvage, are usually framed, is quite too loose and general. They should state the matter with all due certainty and precision (though not, indeed, with the nicety of the common law proceedings) in distinct articles, each propounding, or, as the admiralty phrase is, articulating some material allegation, capable of a distinct answer and proof, if controverted.

In this we should arrive at that distinct knowledge of the real points of controversy which is so desirable for the Court, and to that just regard to the rules of Admiralty pleadings which is so essential to vindicate its equity and facilitate its practice.

So in the case of Treadwell *vs.* Joseph, 1st Sumner, Rep.. 390, the same Judge held, that pleading in the *alternative* was not permissible. And when a libel charged that the libellant was compelled to do certain duties (describing them) on shipboard which were improper and unnecessary—the answer stating, *if* he

was required to do such duty, it was a proper duty, &c.— was held to be insufficient, and it and all proof under it was stricken out on appeal, though no exceptions had been taken. Court—

A party cannot put forth a sort of middle and speculative answer, neither admitting nor denying anything. He should meet the charge of the libel with direct allegations. Besides, the answer does not reach the *gravamen* of the charge. Admitting it to be a part of the duty of the crew to scrape the masts, it is to be done at proper times and seasons, and in a reasonable manner.

In Mr. Benedict's treatise on admiralty he states the rule to be that the libel should "contain every fact necessary to give the Court jurisdiction and to entitle the libellant to the relief which he seeks."

Benedict's Admiralty, sec. 402.

Second.

The libel in this case does not in any respect conform to those rules, and it is specially excepted to for that reason.

1st. In the language of the exception (Record Book, p. 11, fol. 30) the libel does not state or show any fault, misconduct or negligence on the part of the steamboat *Telegraph* or in those having her in charge, or any defect or fault in the boat, her tackle, apparel or furniture.

2d. The libel states the facts as to the position and course of the colliding vessels; the place of the collision and the time; the course and width of the river, and the fact that the barge, under the con-

of Admirality, yet it is requisite that the libel should "state, in clear, distinct and intelligible allegations, the whole *gravamen* of the complaint." The libellant "must set forth every material and substantive wrong upon which he intends to rely, and for which he claims damages, in a distinct allegation." And the "proofs in the case must follow the allegations."

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2d. The libel states the facts as to the position and course of the colliding vessels; the place of the collision and the time; the course and width of the river, and the fact that the barge, under the con-

trol of the "*Telegraph*" collided with the canal boat, under the control of the "*Vaughan*," and the consequent damage. There is no other fact stated as to the cause of the collision. Unless, therefore, this Court shall hold that the fact of the collision occurring under the circumstances stated is, of itself, conclusive evidence of negligence and fault on the part of *both* vessels, then the libel should be dismissed and the judgment below *reversed*.

3. The libel is not helped by the subsequent general charge that the "collision was caused by the negligence and want of skill, &c., of the persons in charge of the steamboat *Telegraph or* of the *Vaughan*, or of both." These are not statements of any facts whatever. They are mere conclusions, asserting nothing and amounting to nothing, and are expressly so held in the case of the *H. P. Baldwin*, 2 Abbott's U. S, Rep., page 257. Besides, the statements are open to the objection of being in the *alternative*, and do not pretend to make any specific and direct charge against either vessel.

1 *Sumner's Rep.*, 390.

AS TO THE DAMAGES.

First.

The amount found by the Referee and awarded by the Court is excessive and unauthorized in any view that can be taken of the *case*

1st. It is conceded and so found by the Referee to compute damages in each of the reports that the quantity of barley lost was 3,480 bushels of 48 pounds to the bushel.

Record Book, pages 89, 94, 110.

2d. It is also proved, and not disputed, that the value of this barley at the time and place of shipment (October 7, 1864, at St. Timothy's Canada), was 70 cents per bushel in Canada currency, and in gold coin of the U. S. (see report of Bett's Referee Record, p. 94, and White's Referee Record Book, p. 110).

3d. There are three reports as to the amount the libellant is entitled to receive: 1st. Report of Betts, Referee (Record Book, pages 89), wherein he allows the libellant the price of the barley in New York in currency at the time it should have arrived and at which that not lost did arrive, viz.: $1.70 per bushel less freight and charges; amounting to $5,091.59 and interest from date of loss. This report was excepted to by all the parties, and on its coming before the District Court for confirmation, it was held erroneous, and that the measure of damages was the value of the barley at the place of shipment in Canada currency, and its

equivalent in the current coins of the United States (Record, page 93). Opinion of Blatchford, J., annexed. 2d. The second report of Betts, Referee, made in obedience to this decision, finding the value of the barley at 70 cents, gold, at the place of shipment, amounting in all to $2,436 with interest (see Record, page 94). This report was confirmed and judgment thereon entered (Record, pages 94, 95). On appeal to the Circuit Court the judgment was reversed as to the damages (and *not affirmed* in any other respect) and it was referred to Kenneth J. White to compute the damages. 3d. The third report was made on this reference wherein the Referee finds that the value of the barley at the place of shipment in Canada, was $2,436, and then proceeds to report the amount of damages sustained by libellant at $4,896,36, and interest on that sum from the date of loss amounting in all to $6,477.83 and for which the Circuit Court ordered judgment.

Thus there are *two* judgments in the record; one that of the District Court in dollars generally for an amount equal to the price of the barley at the port of shipment, being $2,436 and interest; the other, that of the Circuit Court for the like amount with the difference added between gold and currency, at the rate of $2.01, of the latter for $1, of the former, making in all the sum of $6,477.83.

Second.

The grounds on which the decree of the District Court, as to the damages, was reversed by the Circuit Court was, that it did not give the *libellants full indemnity for the loss.* And this for the reason expressed in the opinion of the

Circuit Judge (and there could be no other) that $1 in Canada currency was worth $2.16 in the currency with which the judgment of the District Court could be satisfied. (see opinion of Circuit Judge, Record Book, page 107, fol. 273.) The decree of the District Court as to the damages was therefore reversed; and the clerk was ordered to adjust the loss upon the principle of giving to libellants the *value of the barley in Canada currency at the time of the loss.*

Third.

On the reference before the Clerk of the Circuit Court, it was admitted that a dollar in Canada currency was exactly equal to one dollar of the gold and silver coin of the United States. And upon the same reference it was found that the value of the lost barley was the same amount in the gold coin of the United States that the Referee, in the District Court, had found it to be in Canada currency, at the place of shipment, viz., $2,436. (See Record Book, fols. 232–3 and 286.) It follows, therefore, necessarily, that if the Circuit Court had ordered judgment for that amount, with interest payable in the gold and silver coin of the United States, it would have been "*full indemnity,*" within the principle sanctioned by the Court.

Fourth.

The Court had power to order such a judgment, and it should have done so.

Chrysler *vs.* Renois, 43 N. Y. Rep., 209.
Brownson *vs.* Rhodes, 7 Wallace's Rep., 229.
Butler *vs.* Horwitz, 7 Wallace, 259.

1st. It would have been full indemnity. The libellants have no interest whatever in the recovery, Gordon, the libellant, swears that he was the agent and commission merchant, simply of the consignor to sell the lost grain on it's arrival in New York, and transmit the proceeds to the shippers in Canada. That they had not advanced on it; that it never reached them, and if it had, their only interest in it would have been their commission of 2½ per cent. (see evidence of Gordon, fol. 55, page 20). And further, on his second examination, he swears that the lost barley was *insured* in Canada, and the loss settled in Canada; and this suit is brought for the benefit of the Insurance Company. Now this Company could not have paid more than the value of the grain, and if they receive that back in currency, equivolent to that they paid in with interest on the same, it is full indemnity, (see Gordon's evidence, page 80, fol. 198.)

2. There is no warrant or legal authority for an allowance of damages for the non-payment of money beyond the legal interest given by statute.

Chrysler *vs.* Renois, *supra.*

The right of the defendants to resist the claim made upon them in the Courts is fully equal to the libellants' right to indemnity, in case of a recovery, and the only penalty from the consequent delay is interest and costs.

3. The recovery here is more than sufficient for this, even upon the principle adopted by the Circuit Court. The full amount which the libellants were entitled to recover judgment for, at the time of the entry of the judgment appealed from was $3,224. 52 in gold. The price of gold then was about $1.20 in currency, which would require $3,869.42 only to be fully equivalent to the above sum in

gold. Yet the plaintiffs have recovered $2,608 more than sufficient thus to indemnify them. And if the judgment of the Circuit Court be affirmed, the libellants would collect a sum which would be equal to $6,645.32 in gold at the present price, when the value of the barley in gold, with interest in gold, would be but $3,508.14. Thus these libellants, if this judgment is affirmed as it stands, will be enabled to make a clear profit out of claimants' misfortunes of $3,137.18 in *gold*.

Fifth.

Although the authorities above cited arose out of contract, yet the principle upon which they were decided is equally applicable to damages from acts of negligence. For the rule of damages is the same in both classes of cases, viz.: *compensation* for the loss and damage sustained, in one case by the breach of the contract, and in the other by the negligent act.

Cheanykee *vs.* The United States, 3 Wallace, 320.

Opinion of Judge Blatchford.

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT.

JOHN GORDON and others

vs.

The Propeller "MARY J. VAUGHAN" and the Steamboat "TELEGRAPH."

The claimants insist that the Commissioner should not have taken the value at New York or at the place of collision, but should have taken it at the place of shipment. The value at the time and place of shipment is shown to have been from 67 to 72½ cents per bushel of 48 pounds, in United States gold coin, which was the currency then in circulation at such place, and the currency in which barley was then bought and sold there. The libellants insist that the value at the place of shipment was what the Commissioner did substantially in fact take, but that he took it in the legal tender currency of the United States, by taking such currency value at New York, and deducting commission and freight computed in the same currency. The libellants also insist that as they sue here, they are entitled to have the damages computed in the current currency of the United States, and that if such damages are computed in gold, and are to be discharged in currency, they will not receive

indemnity. The claimants insist that they are entitled to have the damages computed at the value of the barley in the currency prevalent at the place of shipment, and that as that currency is United States gold coin, and does not require to be converted into such coin, as would be the case with any other foreign currency, they are entitled to have the value in dollars so ascertained, stated as the damages, without reference to any premium on gold, or to the fact that the claimants can discharge such damages in legal tender currency. The claimants further insist that, even if the value in New York be taken, it must be the value in gold, found by reducing the currency value, stated by the Commissioner, to gold value, according to the rate of premium on gold which ruled at the time at New York. That gold value they state at 79⅛ cents per bushel.

The law is well settled that in case a contract to deliver goods is broken, the party is entitled to recover the full value of the goods at the place of delivery. And such value is to be computed in the currency prevalent at such place. This was the rule applied by Judge Shipman, in the case of Ross *vs.* the *Patrick Henry*, in this Court (July, 1867), cited for the libellants. In that case, the suit was on a bill of lading to deliver sovereigns at New York, and on proof that the sovereign was worth at that place at the time $7.05, in the currency then and there prevalent, the Court decreed a recovery on that basis. If in this case the action was on the bill of lading of the barley for its non-delivery at New York, the proper rate of damages would be $1.70 per bushel. But in cases of loss of cargo by collision or other tort, the rule is equally well settled that the value of the lost property at the time and place of its shipment is the measure of damages. In the case of illegal capture as prize, where the property is wholly lost to its owner, the damages allowed are only the prime value or invoice price and interest, and no supposed profits or allowance of damages on the basis of a calculation of profits. (Murry *vs.* the *Charming Betsey*, 2 Cranch, 64; Maley

vs. Shattuck, 3 Cranch, 458; the schooner *Lively*, 1 Galison, 315, 324 to 327; Del Col *vs.* Arnold, 3 Dallas, 333; the *Anna Maria*, 2 Wheaton, 327; the *Amiable Nancy*, 3 *Id.*, 546, 360.) The same rule of damages has been established by the Supreme Court for collision cases. In Smith *vs.* Condry (1 Howard, 28), a collision occurred in the port of Liverpool. The plaintiff offered to prove at the trial that his vessel was laden with salt, and was so delayed in her voyage by the collision that the salt was worth considerably less at her port of destination when she arrived there than it would have been worth if she had not been so delayed, and claimed to recover such difference as damages. The Court excluded the evidence, and the Supreme Court held that the evidence was properly excluded, and that in cases of loss by collision the injured party could not recover for the loss of probable profits at the port of destination, and that the value of the property at the place of its shipment was the measure of compensation. That was the rule adopted by this Court in the case of Adams *vs.* the *Ocean Queen* (before Judge Shipman, November, 1866), where the Commissioner, in assessing the amount of damages caused to the cargo of a vessel by a collision, took as the measure the price it would have brought at the port of destination instead of the price paid at the port of shipment. This Court held that the proper measure was the value of the property at the port of shipment, with interest at the rate of six per cent. per annum from the time of the collision. The Circuit Court, on appeal, (September, 1867), affirmed this decision. As the Commissioner in the present case did not adopt as the measure of damages the value of the barley at the port of shipment, in the currency then and there prevalent, the first exception of the claimants to his report is allowed. The second, third, fourth, fifth, sixth, seventh and eighth exceptions of the claimants to his report necessarily fall with the allowance of their first exception and no decision is necessary as to the points involved in those exceptions. They are neither allowed

nor disallowed, but are ordered to be stricken from the record.

The damages computed on the principles above set forth will amount to a certain number of dollars in the money of the United States, and the decree will be for that number of dollars. The case will stand the same as if the barley had been shipped from England, in which event the value of the barley there, in sterling money of Great Britain, converted into the coined money of the United States at the commercial value of such sterling money at the time in such coined money, would be the legal measure of damages; the only difference in the present case being that as the currency prevalent in Canada is the coined money of the United States, it does not require to be converted into such coined money. The rule is the same as if the action were one for the breach of a contract to deliver the like quantity of barley at a foreign port, whether in England or in Canada, or for the breach of a contract for the payment of money made abroad and to be performed abroad in a foreign currency. In a case of the latter description this Court has held that the proper rule of damages is the commercial value of the foreign money in the coined money of the United States, without any allowance for any premium on such coined money. (Vogelgesang *vs.* the *Blohm*, June, 1867.) The fact that under the Act of Feb. 25, 1862, (12 U. S. Stat. at Large, 345,) the debtor can discharge a judgment entered for the amount of damages so ascertained, by paying it in United States notes or legal tender currency, without any allowance for any depreciation in the value of such currency or notes, cannot affect the question as to the proper measure of damages or the proper mode of computing them. A debt contracted in the United States before such notes were made a legal tender, and payable in the United States, can be discharged by such notes, dollar for dollar, according to the tenor of the contract. Such is the law, and the privilege of so discharging any judgment which may be entered in this

case for damages computed on the principles herein set forth, is one which the debtor is entitled to as an incident of the bringing of the suit in this forum. The creditor, if he comes into this jurisdiction to bring his suit, must accept the right to sue with the incident.

The ninth exception of the claimants must be allowed, as the proper rate of interest was six per cent. per annum, and not seven.

The exceptions on the part of the libellants are all of them overruled.

An order must be entered disposing of the exceptions as above stated, and referring the case back to the Commissioner to ascertain the damages on the principles above set forth and report the same to the Court.

SAMUEL E. LYON,
For the Libellants;
C. VAN SANTVOORD,
For the Claimants of the *M. J. Vaughan*;
F. J. FITHIAN,
For the Claimants of the *Telegraph*.